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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

THURSDAY, SEPTEMBER 6, 1984

Morning sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)
Gillies, P. A. (Brantford PC)
Havrot, E. M. (Timiskaming PC)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Kennedy, R. D. (Mississauga South PC)
Laughren, F. (Nickel Belt NDP)
Lupusella, A. (Dovercourt NDP)
Mancini, R. (Essex South L)
Riddell, J. K. (Huron-Middlesex L)
Sweeney, J. (Kitchener-Wilmot L)
Yakabuski, P. J. (Renfrew South PC)

Substitution:

Kolyn, A. (Lakeshore PC) for Mr. Villeneuve

Also taking part:

Gillies, P. A. (Brantford PC), Parliamentary Assistant to the
Minister of Labour
Ramsay, Hon. R. H., Minister of Labour (Sault Ste. Marie PC)

Clerk: Carrozza, F.

Staff: Revell, D., Legal Counsel

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation
Board
Muir, C., Researcher
Wolfson, Dr. A. D., Assistant Deputy Minister, Program Analysis
and Implementation

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, September 6, 1984

The committee met at 10:10 a.m. in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT
(continued)

Resuming the adjourned consideration of Bill 101, An Act to amend the Workers' Compensation Act.

Mr. Chairman: The minister is due to walk through the door almost any moment now. He may be tied up in traffic. He left the convention centre, where he was meeting at 9:50 a.m., so he should have been here by this time. I know he has a few remarks to make before we begin, so perhaps the committee will permit us to mark time while we sort out a few of these handouts coming our way. These are additional submissions from various quarters. The minister will be making an opening statement.

It was in my mind that we would be meeting Tuesday to Friday, but I have been corrected by several people saying we are meeting Monday to Thursday next week. I guess that is right and I was in error on that. As long as we all understand what days we are meeting next week--

Mr. Sweeney: I have Monday to Thursday.

Mr. Chairman: Okay. For some reason or other, it was in my mind, not on paper, that it was--

Interjection.

Mr. Chairman: Monday to Thursday--four days next week. Yes. A total of six days. Yesterday was a day of rest. I like this week; a two-day week is a good week.

I would like to call on the minister, when he has caught his breath, for his remarks as we begin our clause-by-clause discussion on Bill 101.

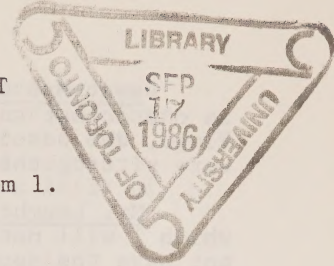
Hon. Mr. Ramsay: First, I would like to apologize for holding people up and indicate a couple of conflictions I will have for today and tomorrow.

Mr. Sweeney: A couple of what?

Mr. Laughren: Afflictions or conflictions?

Hon. Mr. Ramsay: Conflictions. I am involved in the conference the Premier (Mr. Davis) is hosting today at the convention centre, and--

Mr. Sweeney: You were anticipating that, surely.



Hon. Mr. Ramsay: I was sure I was safe. I was way over in one corner and it is a very big room. I thought it was you, Floyd, who was in the other corner. I felt that as long as you were sitting there I was safe.

Mr. Laughren: If I wanted to raise a point of privilege, which I will not do, I would raise the point that the Premier did not have the courtesy to invite the opposition to this very important conference, if it is an important conference. If it is not, then of course I understand why he would not invite us to it.

Hon. Mr. Ramsay: I did see the member for York South (Mr. Rae) there in a prominent spot.

Mr. Laughren: The members were not invited to that conference. He did not have the courtesy to invite the members to the conference. It is as simple as that. It is a question of manners.

Mr. Chairman: Be that as it may--

Mr. Laughren: I did not start it.

Mr. Chairman: I know, and you said you were not going to raise it as a point of privilege--

Mr. Laughren: I will not.

Hon. Mr. Ramsay: If I could continue--I hope I will have the indulgence of the committee--I am committed to participate on a panel this afternoon. Therefore, I will not be able to be here until later in the afternoon, but my parliamentary assistant, Phil Gillies, will be here and will fill in. We have Dr. Wolfson and other members of the staff here who are all extremely qualified. I will try to be back later this afternoon and then again tomorrow morning.

During the course of the committee's public hearings in July and early August, either my parliamentary assistant, Mr. Gillies, or I undertook to pursue a number of issues raised by members of the committee. This morning I would like to try to dispose of the questions still outstanding. In addition, I will be proposing three amendments to Bill 101. Perhaps I can deal with the latter items first.

On June 19, in my statement on second reading of Bill 101, I indicated my intention to introduce an amendment at the committee stage to make provision for French-language services at the Workers' Compensation Board. I reaffirmed that commitment before this committee on the first day of the hearings on July 16.

The suggested wording of the proposed amendment is relatively simple and straightforward. It provides that, where appropriate, services under the Workers' Compensation Act be made available in the French language. This particular formulation has somewhat broader application than a provision tied to board services alone, since it will also cover the activities of agencies other than the WCB mandated by the act, including the offices of the worker and employer advisers, the new independent appeals tribunal and the panel of medical assessors.

The second amendment I am proposing was really foreshadowed by my remarks to this committee at the commencement of proceedings on Tuesday, July 24. The members of the committee may recollect that some concerns had earlier been expressed in regard to the construction to be placed upon the wording of subsection 24(1) of Bill 101.

Legislative counsel was asked for his opinion of this particular section. He indicated that in his view the wording of the section would require either the chairman or vice-chairman to vote with the majority before a decision of the corporate board could be taken. In other words, the chairman and vice-chairman in effect would have had a joint veto over any board decision.

In a short statement immediately after legislative counsel's interpretation of the wording of subsection 24(1), I explained the objective in including this provision in the bill, and I indicated a willingness to review the section in the light of legislative counsel's opinion.

The amendment I am introducing today results from that review. It effectively removes the requirement that the chairman or vice-chairman be in agreement with the decision of the corporate board, while retaining the requirement that at least one of them must be present for a quorum. This ensures that corporate board decisions cannot be taken in the absence of both full-time board members, but it does not prevent their being outvoted by other board members. Board decisions would be based on a simple majority vote.

The third amendment I am putting forward today constitutes a clarification rather than a change of substance. During the first day of public hearings on July 16, confusion arose as to the availability or otherwise of the office of worker adviser to assist claimants for survivors' benefits in their dealings with the board. At the time, I believe I indicated that it was certainly not the government's intention to exclude such claimants from this kind of assistance. In fact, I understand that the worker advisers already act in this capacity when approached to do so by a survivors' benefit claimant.

During the discussion of this matter on July 16, the member for Nickel Belt (Mr. Laughren) suggested that an appropriate rewording of the relevant section of the act might be considered so as to put the matter beyond doubt. While I continue to believe that the current wording of section 32 of Bill 101 is adequate to ensure availability of the worker adviser to all claimants, I certainly have no objection to clarifying the issue by clearing spelling out that the worker adviser be available to all claimants, whether a surviving dependant, a surviving spouse or an injured worker. The proposed amendment should eliminate any possible confusion.

Those are the three amendments to which I referred at the beginning of my remarks. Judging by the comments made at various times during the public hearings, there are a variety of other provisions incorporated in Bill 101 with which some committee members may wish to take issue.

I have already responded in general terms to many of the most frequently expressed concerns, both during the second reading debate and in my opening statement to this committee. I have also indicated that I am prepared to listen to and give due consideration to any compelling and persuasive argument advanced in justification for adopting a course of action different from that contemplated by Bill 101.

No doubt, some members of the committee will be proposing amendments of their own as we proceed through clause-by-clause debate. I look forward to the discussion which these alternative proposals will almost certainly provoke.

10:20 a.m.

Mr. Sweeney: Excuse me, Minister. Before you go on, I am having some trouble finding the reference you made to section 32. Can somebody on your staff help me there, please?

Hon. Mr. Ramsay: Sure.

Mr. Sweeney: I just want to be sure I know what you are referring to when we come to it.

Section 32 starts on page 21.

Hon. Mr. Ramsay: It starts on page 21?

Mr. Sweeney: Yes. But what is the reference--

Dr. Wolfson: Do you mean page 29?

Mr. Sweeney: Office of the worker adviser, section 86q?

Dr. Wolfson: The worker adviser reference is to section 86q; that is correct.

Mr. Sweeney: So that is where the change will be made?

Dr. Wolfson: Yes.

Mr. Sweeney: Thank you. Sorry to hold you up, Minister.

Hon. Mr. Ramsay: No problem.

Perhaps I can now deal with the outstanding issues arising out of the hearings to which I promised a response. I will attempt to be as concise as possible in my comments.

Although I was not present at that particular session, I understand that during the presentation made by the United Steelworkers of America on July 25, there appeared to be some misunderstanding as well as disagreement in principle as to the board's proposed method for calculating net earnings for purposes of determining benefit entitlement.

While I am not at all sure--Mr. Chairman, I am having a very difficult time reading, with the comments that are being made at

the table here, both by my staff and by the committee staff. I do not have the capability of reading and listening to the side comments as well, and I do not want to miss anything.

Mr. Chairman: Carry on. We will be quiet.

Hon. Mr. Ramsay: Thank you.

While I am not at all sure I can improve upon the explanation given by Mr. Cain at the time, I have provided to the committee some examples which may help explain the calculation.

As I understand it, the worker's earnings are calculated with reference to the nominal hourly or daily rate of pay at the time of the accident with provision for an alternative calculation where the usual method somehow fails to fairly represent the worker's earnings.

In determining net earnings, three items are deducted from the gross earnings figure: probable income tax, Canada pension plan and unemployment insurance premiums payable.

New subsection 44(2) of the act provides that the board will publish each year a net earnings table, reference to which will indicate the net earnings equivalents of the various gross earnings levels, thus facilitating the calculation of benefit entitlement.

Part of the confusion with this section seems to have arisen because various other factors which normally affect the tax actually payable by a worker, such as charitable payments, medical expenses, superannuation contributions and so on, are not included in the calculation.

Similarly, other items which might normally add to taxable income, such as employer-paid Ontario health insurance plan premiums, are also excluded from the calculation.

In fact, this sort of detailed adaptation of the tax calculation to personal circumstances is not an administratively feasible proposition. Instead, taxes will simply be calculated with reference to the relevant gross earnings and to the standard tax deductions such as the employment expenses deduction and the worker's personal, married and child tax exemptions as appropriate.

This method approximates net earnings based on statutory deductions from income without taking into account other sources of deduction, which to some degree are contingent on the individual's own actions or behaviour. It seems to me the chosen procedure strikes the right balance between fairness and simplicity.

The member for Kitchener-Wilmot (Mr. Sweeney) asked a number of questions related to the selection procedure, period of tenure of appointees and arrangements for reviewing the composition of the roster of medical assessors. Section 86h of the proposed new act provides for the appointment by cabinet of the members of this roster following the solicitation of the views of employers,

workers and the medical profession. While no precise procedure for consultation has been set out as yet, I would expect that at the very least groups such as the Ontario Federation of Labour, the Ontario Medical Association and the principal employer organizations will be contacted for their views.

Once the roster has been established, the appeals tribunal will draw upon the practitioners so included for assistance as it sees fit. Appointment to the roster will be by order in council. The normal three-year period for such appointments will be observed, although this does not preclude the rescinding of an appointment before that time should the performance of an appointee prove to be unsatisfactory in some respect. Reappointment for subsequent terms would also be possible.

During the presentation by the United Auto Workers on August 2, misgivings were expressed about the office of employer adviser. In particular, the suggestion was made that some employers might make use of this new service to tie up the claims process by contesting and challenging claims rulings to a much greater extent than is currently the case. On the other hand, there was recognition of the need for some employers, especially small ones, to be able to refer to a source of advice on the sometimes unfamiliar and often complex procedures involved when a workers' compensation issue arises. A suggested compromise between these two views of the employer adviser's role was to confine access to the adviser to small companies only, say those with 20 or fewer employees.

While I tend to agree that the most persuasive case for an employer adviser is probably based on the needs of the very small employer, I hesitate to set what would really amount to an arbitrary limitation on availability. Criticism of the proposal appears to rest, in part at least, on the notion that employers in general can have no legitimate reasons for participating in the process whereby claims are adjudicated. In addition, it ignores the fact that employers themselves may be the originators of appeals unrelated to individual worker claims, for example on assessment issues.

At this stage I am inclined to think that the employer adviser proposal should remain as it now stands. In other words, the adviser should be available to all employers with the following proviso. While I am confident that such will not transpire, if experience indeed suggests that the employer adviser function is being used simply as a means of stalling the claims process in the illegitimate way that some critics appear to anticipate, then I will certainly be prepared to review its operation and to make changes.

I undertook to discuss with board officials three other issues raised during the committee hearing. The first involves the situation where a company closes down operations, thereby leaving behind a substantial claims liability which other employers in the industry must in effect pick up in their own future assessment costs. The issue was raised by the Council of Ontario Contractors Associations in its submission but is of concern to a number of other employers too, particularly in industries most affected by plant closures.

From the discussions that have taken place with the board on this issue, I understand that considerable thought has already been given to the means by which outstanding claims costs could be capitalized so that an employer contemplating a cessation of operations could be assessed for some or all of these costs. The problem would largely disappear within the context of a fully funded system where assessments are set so as to cover new claims costs.

As members of this committee know, the board is planning to move towards such a system, although this will take place over an extended period of time. In the meantime, I intend to meet further with the board on the matter to explore whether interim measures are required to deal with the problem. I will keep the members of this committee informed on the outcome of those discussions.

The second issue which I undertook to raise with the board relates to present policy regarding the supplement sections of the act, with particular reference to the practice of disallowing entitlement to a supplement where the worker is in receipt of Canada pension plan disability benefits. Bill 101 seeks to change this practice by regarding CPP as an offset rather than a bar to a supplement.

10:30 a.m.

I was asked to intercede with the board to discuss the possibility of amending the current policy in the intervening period before the proposed amendment to the act come into effect. I can report to the committee that the matter has been discussed with the board and that further meetings are planned shortly. While I realize time is of the essence in this situation, I need hardly remind the committee members that the issue is not a simple one to resolve. Again, I will keep the members informed as to progress on this issue.

The third issue to be raised with the board relates to the discount rate used for commutation of pensions. I have sought clarification of the basis for the present policy, which I understand involves use of a seven per cent commutation factor.

I understand that the board itself has agreed to address a number of other issues raised during the hearings and, in fact, has already replied to some or all of the questions raised. I hope that between us we have covered all the items on which we were asked to provide information or comment. If anything has been inadvertently omitted, I am sure the committee members will be quick to point out such a deficiency.

Mr. Lupusella: Mr. Chairman, on the last item, do I understand that the seven per cent discount rate is in the process of discussion along with the previous item of supplementary pension and Canada pension plan?

Hon. Mr. Ramsay: That is correct.

Mr. Laughren: Assuming we get the amendments through this week and next, is it your intention to proceed with it in the House during the fall session?

Hon. Mr. Ramsay: Very definitely.

Mr. Sweeney: Always supposing there is a fall session.

Mr. Chairman: You can plan on it for the time being.

Hon. Mr. Ramsay: If you want a personal observation, I hope there is one.

Mr. Chairman: We can hand out the amendments that will be proposed at the appropriate time. Mr. Sweeney, are you proposing any amendments at the present time?

Mr. Sweeney: Not at this point.

Mr. Chairman: Could we have them in advance of when they might be discussed so everybody can consider them?

Mr. Sweeney: Yes.

Mr. Chairman: It is the same with Mr. Laughren. I understand he has some that he is getting ready now. I think it would be appropriate if all the members could have any amendments in in advance.

That being the case, I suppose we might as well start what we came here for and that is our clause-by-clause debate.

Mr. Lupusella: Because we do not have our amendments ready, if there is general agreement, I hope we are flexible enough to return to items we are going to debate today, as a result of connections the amendments might have with certain principles on which the committee will take a clear position. Are we going to vote on clause-by-clause amendments as well or what? I do not know what kind of structure we are going to follow.

Mr. Chairman: I suggest that we proceed right at the beginning with clause 1. If there is an amendment that is going to be proposed which is not ready, we could perhaps stand that clause down for the time being until such time as you have your amendment ready. I think that would be agreeable to all members.

We might as well vote on each one as it comes up, but if there is going to be an amendment and you are not ready with the amendment, we could stand it down. I think that would be agreeable.

Mr. Lupusella: Are we flexible enough to re-open a clause that has previously been debated--that is my particular concern--or are we going to follow a rigid system so that when the vote takes place, it is closed? I would appreciate it if we are flexible enough to re-open particular clauses when we have other points to make.

Mr. Chairman: We should have unanimous consent of the committee to return. That way we can, if necessary, stop it from becoming habitual, but certainly if something later on reflects on an earlier clause, I do not see any reason why we should not return to it. However, we should agree to have unanimous consent of all committee members to return to a previously adopted clause.

Using those very loosely defined ground rules, I will start reading. My voice is apt to crack at any time. If it does, perhaps other members can fill in. I may turn it over so that everybody has an opportunity to read some of the clauses.

First, clause 1--

Clerk of the Committee: You do not have to read the clause at all.

Mr. Chairman: Do I have to read through each clause?

Mr. Lupusella: Yes, we should. Is the explanatory note part of the bill as well? If it is, maybe we should start from there.

Mr. Chairman: The explanatory note? Do you want me to read all that too?

Mr. Lupusella: Is it part of the bill?

Mr. Chairman: No. It is an explanatory note and not part of the bill.

1.--(1) Clause 1(1)(b) of the Workers' Compensation Act--

Clerk of the Committee: Mr. Chairman, you do not have to read this.

Mr. Chairman: The committee wants me to read it.

--being chapter 539 of the Revised Statutes of Ontario, 1980, is repealed and the following is substituted therefor:

(b) "Accident fund" means the fund established by this act for the payment of benefits under schedule 1, the costs and expenses of the administration of this act, and such other costs and expenses as are directed by or under this or any other act to be paid out of the accident fund, including all expenses arising out of the establishment, maintenance and operation of mine rescue stations under the Occupational Health and Safety Act."

Any concerns or discussion?

(ba) "appeals tribunal" means the Workers' Compensation Appeals Tribunal;

(bb) "average earnings" means the average earnings of a worker determined by the board under section 43.

(2) Clause 1(1)(d) of said act is repealed.

(3) Clauses 1(1)(g) and (h) of the said act are repealed.

(4) Clause 1(1)(k) of the said act is repealed and the following substituted therefor:

(k) "employer" includes every person having in the person's service under a contract of hiring or apprenticeship, written or oral, express or implied, any person engaged in any work in or about an industry and includes,

(i) the crown in right of Ontario and any permanent board or commission appointed by the crown in right of Ontario,

(ii) a trustee, receiver, liquidator, executor or administrator who carries on an industry,

(iii) a person who authorizes or permits a learner to be in or about an industry for the purpose mentioned in clause (q).

(5) Clauses 1(1)(n) and (o) of the said act are repealed and the following substituted therefor:

(n) "industrial disease" includes:

(i) a disease resulting from exposure to a substance relating to a particular process, a trade or occupation in an industry,

(ii) a disease peculiar to or characteristic of a particular industrial process, trade or occupation,

(iii) a medical condition that in the opinion of the board requires a worker to be removed either temporarily or permanently from exposure to a substance because the condition may be a precursor to an industrial disease, or

(iv) any of the diseases mentioned in schedule 3 or 4.

Mr. Laughren: Mr. Chairman, about the diseases in schedule 3 or 4, if we wanted to add a disease to that, would this be the time to do that?

Clerk of the Committee: No. You can do that when the schedule comes up.

Mr. Chairman: This is the definition we are talking about. I do not think this would be an appropriate time to do it. We are talking about definitions. This is a definition clause that we are amending now.

Mr. Laughren: Right. Therefore--

Clerk of the Committee: Under the schedule--

Mr. Chairman: The schedule is not part of that.

10:40 a.m.

Mr. Laughren: Since the schedule is not part of the bill we are now debating, I am quite happy to wait until we get to the industrial diseases panel section to look at that. I am not saying we have to do it right now, but I think it would be unfair to rule out any kind of discussion on that matter.

Hon. Mr. Ramsay: Mr. Chairman, with your permission, I think you will have the opportunity to take that up with the panel, Floyd. There is nothing to stop you from doing that. In fact, I am quite sure there will be all sorts of representation made to the panel.

Mr. Laughren: But we are debating the bill. Right?

Hon. Mr. Ramsay: I realize that. That is section 34.

Mr. Laughren: I am trying to find a list of the diseases. It is in the existing bill.

Hon. Mr. Ramsay: When we get to section 34 on page 29, Floyd, that is where we could debate this.

Mr. Laughren: Because it refers to schedule 4. Okay.

Mr. Chairman: You see schedules 3 and 4 in there.

Mr. Laughren: Yes.

Mr. Chairman: We will go on to the definitions then.

Subsection 1(5), clause 1(1)(o) of the act: "industry" includes an establishment, undertaking, trade, business or service and, where domestics are employed, includes a household.

Subsection 1(6): Clause 1(1)(t) of the said act is repealed and the following substituted therefor:

(t) "member of the family" means a spouse, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister, and includes a person who stood in loco parentis to the worker or to whom the worker stood in loco parentis, whether related to the worker by consanguinity or not so related.

Did you understand that?

Mr. Laughren: No. Is there another word you could use?

Mr. Chairman: There are any number of words I could pick instead of that.

Mr. Revell: It essentially means by blood.

Mr. Laughren: If that is true, why do we not say by blood? I know that is asking a lot.

Mr. Chairman: Or say it in the definition clause.

Mr. Revell: That is a good question. I think "consanguinity" is a widely accepted expression that has been around and has been given interpretation by the courts. I would rather stay with "consanguinity" than go to the expression "by blood."

Mr. Laughren: All I know is every time I use that expression in Shining Tree they look at me blankly. I guess it is part of the mythology of the legal profession, but I do not know why we have to use it. Anyway, I certainly would not like to take up the time of the committee debating that.

Mr. Chairman: We will move on to subsection 1(7) of the interpretation clause:

Subsection 1(1) of the said act, as amended by the Statutes of Ontario, 1982, chapter 61, section 3, is further amended by adding thereto the following clause:

(xa) "spouse" means either of a man and woman who, at the time of death of the one who was the worker, were cohabiting and,

(i) were married to each other, or

(ii) not being married, had cohabited with each other immediately preceding the death,

(A) for a period of not less than five years, or

(B) in a relationship of some permanence, where there is a child born of whom they are the natural parents.

Mr. Laughren: Do you want to be stopped from time to time?

Mr. Chairman: I think that would be appropriate, yes. I do not want to have to go back and read it again.

Mr. Laughren: Concerning sub-subclause (B), I do not want to see how many angels can dance on the head of a pin, but I can certainly see a situation where there might not be a lot of permanence. For example, the woman could be pregnant, something could happen and it might not be a longstanding cohabitation. There could be a long-standing relationship or there might not be. It would not be that abnormal to have that situation, and yet it could be ruled out by the term "of some permanence." There would have to be some permanence where the woman could be pregnant, for example. I would worry about the discretion that would be given to the board there.

I know you do not like to be arbitrary--I heard you say that in your opening statement--but you would be being arbitrary if you ruled that a woman who was eight months pregnant would not be eligible but one to whom a baby had just been born would be eligible. That would be arbitrary beyond reason and certainly offensive to the statements you have already made this morning.

Mr. Sweeney: What is legal counsel's normal interpretation of the words "of some permanence"?

Mr. Revell: I am not sure that there has been any interpretation at the present time.

Mr. Sweeney: Is this not contained in the Family Law Reform Act?

Mr. Revell: Yes. This is essentially the wording from the Family Law Reform Act, but I am not aware of a case under the Family Law Reform Act that has interpreted that particular expression. The reason these words were used was to reflect the kind of wording that has been used in the Family Law Reform Act.

Mr. Sweeney: So we have no way of knowing at this stage how they are likely to interpret it. At this point, you cannot give us any guidance as to that.

Mr. Revell: No, I am afraid I cannot give you any guidance on that.

Mr. Laughren: I do not like always to put the darkest interpretation on the behaviour of the board, but I have spent the last two or three weeks in my office engaging in guerrilla warfare with the board on behalf of constituents. I do get suspicious from time to time about how they would behave in a situation such as I have just described. I do not know why it has to be worded in such a way.

Mr. Chairman: Are you willing to accept that because it is in the Family Law Reform Act the same way, in the interest of consistency it should be this way?

Mr. Laughren: But the Family Law Reform Act is not dealing with the same kind of principle here, is it? I am not that familiar with the Family Law Reform Act.

Mr. Chairman: I am not either.

Mr. Revell: I am afraid I cannot answer the question.

Mr. Gillies: I am very surprised that term has not been interpreted in the Family Law Reform Act. It has been around for six years now. It is almost staggering that such a case has not come up.

Mr. Revell: I did not say that it had not. I said I am not aware that it had.

Mr. Gillies: Pardon me.

Mr. Revell: Over the lunch break, if you would like me to, I will attempt to--

Mr. Laughren: Okay. Perhaps we could stand this one down.

Mr. Sweeney: There must be some judicial decisions.

Mr. Gillies: I would certainly think so. In six years there must have been some cases.

Mr. Chairman: Okay. We will hold that in abeyance for the time being.

Mr. Lupusella: If I may, I would like to raise another point because we are repealing subsection 1(1) of the act. On page 1 of the Workers' Compensation Act, when we are talking about dependants, it defines them as members of the family of the worker. In the course of the hearings and presentations, I raised the situation where there is no dependant; for example, where a worker who lives with his father or mother dies on the job as a result of an accident. It appeared at the time that the Minister of Labour was going to take a look at the initial statement to see whether any change would be made. I wonder whether it can take place at this point to incorporate my particular concern.

10:50 a.m.

If you recall, I had certain people in my riding who were very young, 18 or 19 years old; they were not married and lived with their father and mother. To take into consideration my particular concern about these constituents, the matter should be debated now if we really want to make changes. The only thing the parents received was burial expenses for their son; they got no allowance because he was not married.

At the time I made my specific remarks I emphasized that the father and the mother spent a lot of money to raise the child. Just because they were not married at the time of the accident does not mean the only allowance he is supposed to get is burial expenses, which most of the time were not even covered.

If the Minister of Labour (Mr. Ramsay) and members of the committee are sensitive to this issue, it is time we made a change on the definition of dependants. Now, with the present Workers' Compensation Act, dependants means members of the family of the worker. If we want to make a change I would like to incorporate the parent of the worker as a dependant to get the allowance. I am not sure if the message is clear.

Mr. Chairman: Compensation in case of death is dealt with later on under section 36.

Mr. Lupusella: But now we are talking about definitions.

Mr. Chairman: Definitions of--

Mr. Lupusella: We have to make the change now in the definitions if we want to make a change on a specific clause later on.

Mr. Chairman: You are on page 2 under clause 1(1)(t).

Mr. Lupusella: Right.

Mr. Chairman: Where it says "member of the family"?

Mr. Lupusella: Yes: "'member of the family' means a spouse, father, mother, grandfather, grandmother, stepfather, stepmother" and so on. By reading the present policy of the board, for a person who is not married and is faced with a fatal accident and has been living with his father and mother, the only allowance is for burial expenses and nothing else. This means that there is no allowance going to the father or the mother of the deceased worker just because he did not have any dependants.

By living with the father and mother, even though the worker reaches the age of 18 or 19, they are dependent on the father and mother. They spent a lot of money to raise that child; in case of a fatal accident, why are they just paid burial expenses while no allowance is given to the father and mother of the deceased worker?

Mr. Chairman: I wonder if Mr. Cain could shed some light.

Mr. Cain: Mr. Lupusella was referring to clause 1(1)(f) of the current act. It refers to dependants and it talks--

Mr. Sweeney: Which act did you say, Doug?

Mr. Cain: In the current act on page 1 it states that a dependant is a member of the family, so that is no problem. But these people have to be wholly or partly dependent on the worker in order for any benefits to be paid.

Then if you go over to section 36--which I just lost--on page 20--

Mr. Sweeney: Which act are you looking at now?

Mr. Cain: Still the current act. On page 20, clause (f), it describes that if there are dependants other than a spouse or a child who are dependent on the deceased, that benefits appropriate to the amount of assistance the deceased gave those people could be awarded.

Mr. Lupusella: Could.

Mr. Cain: Even under the proposed bill on page 8, at the bottom of the page, subsection 6, it states the same thing.

Mr. Lupusella was saying, however, there are occasions--and certainly we see them at the board--where parents applied for a pension or something from us and we established, based on the sections I referred to in the current act, that they were not dependent financially on the deceased worker and therefore we will not award them benefits.

Mr. Lupusella is asking, should the section not be changed in order to provide them with benefits, in spite of the fact they are not economically dependent on the deceased worker?

Mr. Lupusella: That is the point I raised. Thank you for your interpretation.

Mr. Chairman: I guess what you are asking should be somewhere in the interpretation, should it not?

Mr. Lupusella: I want the issue to be spelled out in the act without leaving any interpretation of the application of the allowance to the board. I guess as a society we have an obligation to see that the family of the deceased worker who did not have any dependants up until the time of his or her death, gets an allowance because the family spent money to raise that worker. With the present policy, even though the father and mother are dependants of the deceased worker, they may get an allowance. I want to spell out the principle that they must get the allowance whether or not they were receiving money from the deceased worker.

We are stating our case of a tragedy which took place at the work place and that is the principle which should be entrenched within the act without really getting to the point as to whether or not the father or the mother were dependants of the deceased worker. It does not make any sense.

Mr. Chairman: This is something I know you have mentioned on several occasions during our hearings. Can somebody suggest to me what amendments should be made and where they should be made for Mr. Lupusella to put his amendment on the floor.

Mr. Lupusella: Maybe the legal counsel can assist us in taking my principle into consideration.

Mr. Revell: I think it is a fairly difficult problem. It does not necessarily have to be in the definition. I understand the situation. Is it in every case you want a father or mother to be a dependant? Does that fall within the normal scope? I think it is the sort of thing that we should be discussing outside of the committee to canvass the issues. Certainly by making an amendment now to the definition of dependants, to say that the father and mother are always dependants--

Mr. Lupusella: Maybe we need a new clause because I understand the difficulty of it.

Mr. Revell: You have to see that there are further problems that flow from this. You are opening a very difficult issue. For example, there are many people who are not raised by their own parents. Aunts or uncles end up raising particular children. If it is a policy thing that it is fair that mothers and fathers are always dependants, then what about the aunt or uncle who has raised the child virtually from birth because of a tragedy in the family at an early age of a particular worker? What do you do with them?

Mr. Lupusella: I understand the ramifications of my specific concern, but my concern came from two cases which are resolved because of the present policy applied by the board as a result of the present act. They were not considering the father and the mother dependants of the deceased worker. Therefore they just got burial expenses for their son.

I understand the ramifications of my concern, which are the

ones you just raised. Maybe other members can express their feelings on this matter, but I hope they are quite sensitive to that issue. We are talking about compensation in fatal cases. I think we are quite far away from that principle in the present act and the new act because I think we have an obligation as a society to the family who raised the deceased worker in case the deceased worker was not married and did not have any dependants.

11 a.m.

Mr. Kolyn: I am having a little bit of difficulty as to when we become adults. It is my feeling since I do have children and my children are out in the work force, certainly once the responsibility shifts from my obligation to raise them, educate them and feed them, when they are out in the work force, they are doing that themselves as young adults.

The problem I have with what you are saying, Mr. Lupusella, is that you are saying the children have an obligation to the parents, but in a wider ramification, the children would have the same problem if you said: "All right. Who is going to look after your mom and dad when they go on pension? They will not have enough money." As families or as independent people, are we going to have to look after our mothers and fathers? We do not at the present time.

A lot of young people say, "We would like to help our parents, but we are having difficulty raising our own family." The narrow interpretation you want would go across the board and cause a lot of confusion and problems in the medical and health care system.

Mr. Revell: May I interject here? I think I can answer Mr. Lupusella's question more appropriately.

Rather than amend the definition of "dependent"--other things flow from the definition of "dependent" throughout the whole act--if we are to deal with the particular concern you have, Mr. Lupusella, the appropriate place is probably at section 36. Perhaps with discussions between you and me before the committee gets to section 36, we could come up with a suitable amendment that would reflect your policy. I do not think using a definition of "dependent" is necessarily going to be the place to do it.

Mr. Laughren: On a point of assistance, I have been informed by one of Ontario's finely honed legal minds that perhaps section 60 of the Family Law Reform Act would help us with this. When you bring back the reference to the relationship of some permanent section of the Family Law Reform Act, you might want to bring back section 60 as well.

Mr. Mancini: You are not talking about Mr. Lupusella's subject now.

Mr. Laughren: Yes, I am.

Mr. Chairman: It is somewhat the same thing.

Mr. Riddell: I understand Mr. Lupusella's concerns and I am a little inclined to agree, although I am always reluctant to do that.

I had a case of a boy who was working in the salt mines in Goderich and living with his mother, who was separated. His mother did not have a job at the time and he was helping to keep the home fires burning. He was killed in the mines. We endeavoured to get compensation for his mother. I appeared before the board. Our efforts were in vain so I can understand his concerns. This was the case of a mother. She is now the mayor of Goderich. Thank heaven she strove to get something going for herself, but at the time she had no job and no income that we were aware of. The boy was helping to keep things going and lost his life down in the mines. The Workers' Compensation Board simply said: "That is tough, mother. You get along the best way you know how."

Mr. Mancini: That is a very good point. I am somewhat confused now because I thought it was explained to us--I do not know if it was by the legal counsel or someone else--that, under the conditions described by Mr. Riddell, compensation payments are made. I am at a loss as to--

Mr. Cain: The adjudication of it would stand on whether it could be established that this lady was financially dependent in some way on her deceased son. Apparently that dependency could not be established. We say there must be, based on the act, some kind of financial dependency on the deceased. Apparently that was not established.

Mr. Mancini: Could you expand on the kind of dependency a little further? Does that mean--I am helping out my colleague, Mr. Chairman.

Mr. Chairman: The only comment I was going to make is that Mr. Lupusella and legislative counsel are going to get together and bring in something. Then we can get into a debate on it. Right now we are--

Mr. Mancini: I understand that. That is fine and well, but we also have to understand the existing legislation and how it works. In my view, there is quite a bit of confusion as to how it works and whether it is working. I want to get some expansion and some type of definition as to what we mean by "some kind of financial dependency." Does that mean a weekly payment is necessary to keep the household going or does it mean payment of bills on an occasional basis? Exactly what do you mean by a financial dependency?

Mr. Cain: I would be happy to bring the policy in so that one can see it more clearly; but yes, it could mean paying bills, if anyone has copies of the bills to show that this person, the deceased, was paying them; it could mean weekly contributions to the household. But perhaps to be accurate I should bring in the policy paper itself and you could see it. It is a very small policy, but it will describe what we are doing.

Mr. Chairman: Can we leave that part until you have a chance to get together and resolve--

Mr. Sweeney: I believe we are now at the end of the definitions in the act. Am I correct?

Mr. Chairman: No, we have subsection 1(8) to go on page 3; we did not do that, I do not think. We have subsections 1(8), (9) and (10) to go.

Mr. Sweeney: Let me come back, then, to this general area of members of the family and spouse. You will remember that, when we were dealing with agricultural workers, one of the issues that was raised was the extent to which a wife or a child who was working on the farm but who was not actually earning a wage was not necessarily eligible, if I remember Doug Cain's definition, for workers' compensation benefits. At that point there was general agreement among the committee, I think, that we were going to have to take another look at the way we defined those people.

I do not think, if I remember Doug Cain's interpretation, that there was any problem if a wage was actually paid; then they were considered employees. But there are situations in which there is no actual transfer of funds and yet the people do work. In other words, the wife is out on the tractor, the kids are out--whatever the case may be--and they get injured in that situation.

It was left, but my impression clearly was that there was some understanding we would deal with this situation when we came to it. Jack, I believe you were the one who gave us two or three examples of that. I am just not sure if this is the place where we want to put it in or if there is some other place where we want to deal with it.

Mr. Cain: May I just make a small interpretation? There is a difference between a spouse and a child. A spouse must have personal coverage in order to be covered under the Workers' Compensation Act. Whenever there is an ownership of a company, in order for the spouse to be covered by compensation, that spouse, be it a man or a woman, must have personal coverage; then he or she is automatically covered under the act.

As far as the children are concerned, yes, I explained that the child must be provided with a wage--not just an allowance that any child might receive or the fact that the child lives in the house and someone might be able to say there is a certain value to that; it must be an actual stated wage--and in that case, then of course the child is covered. But there is a difference between the coverage of a spouse and a child under the Workers' Compensation Act.

Mr. Chairman: That defines the situation, Mr. Sweeney, but it does not answer your question.

Mr. Sweeney: I do not think it deals with the problems we face--

Mr. Chairman: No, it does not at this point.

Mr. Sweeney: --unless we are simply saying to the

agricultural community that they are going to have to go through the motions of making a bookkeeping entry someplace and that is the only way they can be covered. Is that what we are saying to them, or is there something we can do in the legislation that gets around that charade?

Mr. Cain: With respect to the spouse, that goes across all industries. If there is a sole owner of a machine shop--we will assume it is a male--and the individual's wife works in that machine shop as well doing books or whatever, for that person also to have coverage under the Workers' Compensation Act she would have to ask for personal coverage as well.

With respect to the children, as it stands today they do have to show up on the payroll somehow in order for us to note that they are workers; they have to be receiving a wage. The act suggests that you should be receiving a wage unless you are a learner or something like that.

Mr. Sweeney: Can I ask that we not pass a final vote on this one? I am still a little unsure and I would like to discuss it with my colleague a little bit further. As I say, I would have to go back and take a look at the Hansard records as to exactly what we decided at that time, but I thought there was an agreement that we would have to take another look at this.

11:10 a.m.

Hon. Mr. Ramsay: I do not recall it, John. I was in and out of the hearings.

Mr. Sweeney: I do not know whether you were here when the agricultural workers were in to see us, but they expressed this as a real concern on their part.

Hon. Mr. Ramsay: No, I was not here then, because I do not recall it.

Mr. Sweeney: They said, "Let us face it, a farm family is really different from any other kind of working family in that the job and the home are the same place." The wife simply going out into the field to do something, although she did not do it on a regular basis, was not uncommon. One of the children going out to do something was not uncommon.

It is unlike the situation involving a man who runs a small industry, which is usually physically removed from the home. In other words, it is a unique situation. It did not appear to them--I was one who agreed, and I thought we had a general agreement--that it had to be looked at in a unique way. There did not seem to be any kind of family-working relationship that matched the family farm.

Mr. Gillies: Just to broaden that a bit, I have friends in Brantford, as I am sure you all have in your ridings, who have a little corner store, which is really the front half of their house. If one of the kids goes out to wait on somebody at the counter, I dare say he is not really an employee, but he is in a

work place and something could happen that is very analogous to the farm situation.

Mr. Sweeney: It could be.

I am not prepared to make an amendment at this time, Mr. Chairman. Can I simply ask that we do not vote on this particular section? I would like to come back and at least explore it a little bit further.

Mr. Chairman: Okay. We will have to vote on the whole section, I think. We have really passed nothing up to this point. We will finish reading through to subsection 1(10) of the definitions. We will probably take no vote at that time, because there are two or three points that are hanging in the air.

Mr. Sweeney: All right. As long as that is agreed.

I have one other point.

Mr. Riddell: Before you leave that, I wonder if I could have one thing clarified. As a farmer-owner, can I apply for personal coverage?

Mr. Cain: Yes. Whether or not you are hiring workers, you can apply for personal coverage.

Mr. Riddell: In which case, if a combine gobbles up my arm or leg, I will receive workers' compensation for the rest of my life?

Mr. Cain: That is true. The only thing one has to keep in mind when applying for personal coverage and therefore coming under the act is that if by chance that farmer is in an accident with another schedule 1 employer--let us assume an Imperial Oil truck--and he is seriously injured, he cannot sue Imperial Oil. He must accept compensation, because there is no third party right of action. That is the only thing we remind employers of when they decide whether they wish to take personal coverage.

Mr. Lupusella: Can the farmer cover each member of the family as well when there is an application for WCB coverage and the assessment rate is established?

Mr. Cain: I have indicated that the spouse has to have personal coverage; so the spouse also applies for personal coverage. As far as the other members of the family are concerned, as long as they are earning money and are shown on the payroll as workers, they are automatically covered. They have to be covered.

Mr. Lupusella: Is this a matter of policy or is it based on the principle of the present act?

Mr. Cain: Regarding the fact that someone has to be covered under the Workers' Compensation Act, one looks at the definition of "worker," wherever it may be.

Mr. Sweeney: That is the next one coming up. Is it different from the present one?

Mr. Lupusella: I want to take into consideration the concern raised by John that each member of the family can be covered. Under the present act, they are covered only if they are receiving money from the so-called employer, who in that case is the owner of the farm. Is that part of policy or is it part of the act?

Mr. Cain: It is part of the act to the degree that the interpretation of "worker" is there to say what a worker is; it is someone who is in a contract for service, written or oral, expressed or implied. The definitions of "worker" and "employer" designate who a worker is.

Mr. Lupusella: In other words, if they are workers and they get weekly payment.

Mr. Cain: Yes, of some sort.

Mr. Riddell: Obviously, the farmer-owner who has coverage has to come up with some kind of fictitious wage that he pays himself. What is to stop him from coming up with a fictitious wage that he pays to his dependant?

If his dependant is going to collect are you going to ask for receipts, or are you going to accept the fact that the dependant was paid a wage? I did not know that farmers could get coverage, but obviously they have to give themselves some kind of fictitious wage so you will know how to base your compensation.

Mr. Cain: They apply for personal coverage and state the amount of money they want to cover themselves at, up to the maximum. It has nothing to do with what actual earnings they receive. With regard to someone working on their farm, they have a payroll record which shows they are paying that worker X dollars. When our auditors go out, they check the books. I do not know what accuracy the books have.

Mr. Kolyn: If you were paying (inaudible) \$100 a week and you were showing it on your wage book, when they figured the rate it would be included, as much as you are paying or as low as you are paying.

Mr. Riddell: If I indicate I am paying my child so many dollars an hour--that is the muddy part of our legislation.

Mr. Chairman: Dollars would have to change hands, I would think.

Mr. Kolyn: You would have to pay him. You would have to give him a cheque as a wage for the week.

Mr. Sweeney: Then you would turn around and take it back for room and board.

Mr. Kolyn: The point is, he is going to have to pay tax

and all the rest on it. In any small business, you pay the wages. They check your wage book, if you have a small business, and then they base your compensation rate on how many employees you have and how high up on the scale you are. But the farmers would not be checked. They are taking your word for it as to how much coverage you want on the farm.

Mr. Sweeney: But you can only go to the maximum \$31,000 anyway. You cannot go beyond that.

Mr. Kolyn: Most of them do not. Small businesses would not go much higher than the maximum anyway, John.

Mr. Chairman: We will return to that at the vote time.

Hon. Mr. Ramsay: Just for the information of Mr. Sweeney and Mr. Riddell, I am meeting with the Farm Safety Association in early October, and they are bringing along some representatives of various farm groups. There are three dates here, October 9, 10 or 11; it is one of those days.

They want to discuss workers' compensation and coverage for the agricultural community and so on. If you wanted to have a representative at that meeting or if either one of you wanted to attend, I do not see any reason for you not being able to do that.

Mr. Sweeney: We had before us a fairly good delegation from the agricultural community. They raised the issue but they did not have any solution for us. We did commit ourselves to deal with the issue.

Mr. Laughren: You just want to get him out of the riding during the election campaign.

Mr. Sweeney: As long as it is agreed that we are not going to vote on it, then I am prepared to leave it. As I say, we will discuss it.

I have one other point at this time and it is simply a matter of alphabetical order, that is all. I notice we are now about to move from "s" to "w." There was a considerable amount of attention given to a definition of the word "suitable." The chairman will realize that a number of groups appeared before us and recommended that we adopt the Saskatchewan definition of "suitable."

Mr. Kolyn: Which is?

Mr. Sweeney: I would have to go back in my notes to find it, but we have it there. It is in the white paper. I cannot remember what page, but it is in there.

Mr. Chairman: I thought it would be simple if it came from Saskatchewan.

Mr. Sweeney: The ironic thing was that we were getting both employee and employer groups saying they felt that would be a good definition.

Interjection: It does not use the word "consanguinity."

Mr. Sweeney: Can the minister or someone tell me if you have any intention of putting it in? Have you discussed it? Is it appropriate that we put it in at this particular point or, at least for debate purposes, that we introduce a motion? Where are we at?

The minister will recall that it was in the committee's report.

Mr. Chairman: Draft report, yes.

Mr. Sweeney: Which was approved by the whole committee, or at least by the majority of the committee.

11:20 a.m.

Hon. Mr. Ramsay: Is that not related to the wage loss concept?

Mr. Sweeney: Yes, mainly in the return-to-work provisions, which I want to bring up in a few minutes as well--in other words, if suitable work was available requiring the employee to make an effort and the whole question of supplements and eventually wage loss and that kind of thing.

Hon. Mr. Ramsay: Yes. It is my feeling that is something would be addressed in phase 2. I am not saying I am right, but that was my understanding.

Mr. Sweeney: But there is a reference in this legislation to supplements in lieu of wage loss. I believe you indicated that for the time being the supplement would be the wage loss factor until the wage loss principle was brought in during the next step. If we are incorporating that, if that is the temporary substitute, then the concept of suitable work being available and the supplement being dependent upon that really do go hand in hand.

Hon. Mr. Ramsay: Okay. Let us come back on that one. I will have something for you this afternoon.

Mr. Sweeney: As I said, I am bringing it up at this time only because it would come in that alphabetical order.

I have another one. I am not sure if "older worker" would come before or after or be included in it. Could I raise it so that we can consider it? Again, with respect to the supplement, there is a section in this bill dealing with the term "older worker." It is not defined. There was a fairly strong suggestion that we may not want it defined. We do not want it too tightly defined. May I get anything from the minister or one of his officials as to whether you have any intention of doing that?

Can you give us any indication of what the likely working definition of it is going to be? We are left up in the air right

now. I am not saying I necessarily want a definition or that I want it pinned down too finely. I would like a bit of flexibility for individual cases, but at the same time we would like to have some sense of how it is likely to be defined. I am not prepared to write a blank cheque.

Hon. Mr. Ramsay: We were certainly not proposing--any clarification, Doug?

Mr. Sweeney: It is a section that was in, and then it was taken out. Now it has been reintroduced.

Mr. Laughren: Which section is that?

Mr. Sweeney: It is the business of a supplement that would take the place of old age security for an older worker who simply could not be rehabilitated.

Mr. Laughren: Are you suggesting it should be under the definition section? Is that your question?

Mr. Sweeney: If we are using the term "older worker," and if a particular type of supplement is available only to an older worker, what do we mean by "older worker"? That is what I am trying to get at.

Mr. Laughren: Where is that in the bill?

Mr. Sweeney: I am sorry--

Mr. Revell: It is on page 15, subsection 45(7). That is one example.

Mr. Laughren: John, I thought most of us felt there should not be--I do not want to anticipate that section; it is jumping ahead. It seems you could make the argument that any reference to older worker should be removed and that the same benefits that accrue to an older worker should accrue to a younger worker. Anyway, I do not want to anticipate the debate on that section.

Mr. Sweeney: The only reason I am raising it at this time as opposed to then is the question of a definition of the term "older worker," if it continues to stay in the legislation.

Hon. Mr. Ramsay: This is an administrative matter. I am going to ask Mr. Cain to answer.

Mr. Cain: In reading the bill, the board was pleased with the approach that "older worker" is not defined because it gives one more scope.

As it stands now, no one has come close to defining, even in a broad sense, what "older worker" means. However, as a personal observation, I would suspect that it would mean someone in his late 50s; but it could mean, under perhaps unusual circumstances, someone younger than that.

What it does allow, of course, is argument or discussion or a point of view being put forth through an appeals process when one leaves "older worker" in as it is now, whereas if you define it as age 58 or 59, the appeals process then has no room to manoeuvre. They would have to choose that age because that would be what the act would define.

From our perspective, we are pleased with that. That is all I can explain from an administrative standpoint.

Mr. Sweeney: May I ask then that until we deal with subsection 7 on page 15 of this bill, we leave open at least the option of coming back and defining it? At this time I tend to agree that it is perhaps best left undefined. I want the option to come back. Is that understood?

Mr. Chairman: Maybe the appropriate time to vote on section 1 of the bill is after everything else is voted on. Then that leaves the definitions kind of open.

Mr. Sweeney: Okay.

Mr. Chairman: Mr. Laughren?

Mr. Laughren: No, I will pass.

Mr. Kolyn: I was just going to say I thought that using "older worker" gives the board a lot more flexibility. The planning, as Doug said, would tighten it. From my point of view, "older worker" would be just fine the way it is. We will discuss it later.

Mr. Chairman: Ready to move on to subsection 8 in the definition clause?

Clause (1)(1)(z)--we are getting down pretty low; we cannot add many more after z--of the said act, as enacted by the Statutes of Ontario, 1982, chapter 61, section 3, is repealed and the following substituted therefor:

(z) "worker" includes a person who has entered into or is employed under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise, and includes,

(i) a learner,

(ii) a member of a municipal volunteer fire brigade or a municipal volunteer ambulance brigade,

(iii) a person deemed to be a worker of an employer by a direction or order of the board,

(iv) a person summoned to assist in controlling or extinguishing a fire by an authority empowered to do so,

(v) a person who assists in any search and rescue operation

at the request of and under the direction of a member of the Ontario Provincial Police Force,

(vi) a person who assists in connection with an emergency that has been declared to exist by the head of council of a municipality or the Premier of Ontario,

(vii) an auxiliary member of a police force,

but does not include an outworker, an executive officer of a corporation, or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's industry.

Mr. Cain: It was recently found in the needle trade people who--

Mr. Sweeney: Like a cottage industry type of thing?

Mr. Cain: Yes, that kind of thing. They do sewing at home. I know that is one of the more obvious ones.

Mr. Revell: It is a defined term in the present act.

Mr. Sweeney: It is defined in the present act?

Mr. Revell: Yes. It is clause 1(1)(v). It is essentially the type of person in the cottage industry who would be caught.

Mr. Sweeney: Can I get a definition of those last three lines too? "A person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's industry." Would that include, for example, a security guard at an industrial plant? A security guard has nothing to do with the industry in terms of the nature of the industry, but he certainly is an employee and it could be casual.

Mr. Chairman: Could it also mean somebody hired to, say, clean up the yard sort of a factory and nothing else, not involved in the manufacturing?

Mr. Cain: It usually means someone who might be asked to shovel the snow on the sidewalk. The industry may be a store or a machine shop. A security officer is usually one who works for a company. They are covered under the Workers' Compensation Act.

Mr. Sweeney: So someone who would do landscaping work of one type or another for an industrial plant would not be covered by compensation by that plant.

Mr. Cain: A gardener or something like that.

Mr. Sweeney: That could be covered by a landscaping company, contractor or something.

11:30 a.m.

Mr. Cain: If they were working for a company that did

landscaping, they would be covered under that company. If they were self-employed, they could have personal coverage, if they wished.

Mr. Sweeney: All right. If there were some negligence on the part of the industry, I guess then they would have the right to sue.

Mr. Cain: If they were not covered under the act.

Mr. Sweeney: If he were running a lawnmower along and there was a piece of pipe sticking up in the middle in the lawn and he was injured because of that, then he could sue?

Mr. Cain: Yes, provided he was not covered under the act for other reasons.

Mr. Sweeney: I am trying to think of a situation where he would not be covered in some way.

Mr. Kolyn: What about office cleaners, somebody who is doing office cleaning work? If somebody who comes in and cleans your office for you trips and stumbles--perhaps the light was out or something--would she be covered?

Mr. Cain: Frequently, office cleaners are employed by the company owning the building and, as a result, if they are individuals working for the company that owns the building, they are covered under maintenance of the building; or, if they work for another company that does office cleaning, they are covered by that means; or, if they are employed by themselves, they can have personal coverage.

Mr. Sweeney: Since they are, in effect, at least temporary employees of the industry, why would they not be covered? What is the thinking behind it? I know what you are telling me, but I am not sure why.

Mr. Cain: I think the emphasis in this section is "casual," the section we have just been reading.

Mr. Sweeney: There is no definition of casual in the act.

Mr. Chairman: Casual workers for the purpose of the industry have to be covered, if they are working on behalf of the industry. Getting back to Doug's example of snow removal, you often see advertised in the local papers that Joe Blow has bought a truck and put a snowplough on it and will clean anybody's driveway, that sort of thing.

Mr. Laughren: Joe Blow?

Mr. Chairman: Well, Mr. and Mrs. Blow, Joe or Josephine Blow. They go out and do this sort of business after hours. They go and clean out the yard of a trucking company. They do it as individuals. They are not employed by the firm and they maybe do two or three businesses in the wintertime. Would that not be part of the--

Mr. Cain: That is exactly what we are referring to with the idea of a casual nature.

Mr. Lupusella: John's concern is based on the principle that there are people hired on a temporary basis doing casual work and not covered by the Workers' Compensation Act. Am I correct?

Mr. Sweeney: Yes.

Mr. Lupusella: Which is my concern as well.

Mr. Sweeney: If it were a full-time business, then I can see they would be self-covered, whatever your term is. That is no problem. But people doing this, as the chairman said--

Mr. Chairman: They are moonlighting, as we term it.

Mr. Sweeney: Okay, why would they not be covered?

Mr. Cain: If they are running a business, for instance, cutting grass or shovelling snow, and that is their business, by one means or another they can be covered. We are talking here about casual work, perhaps someone who periodically decides, "I need a few extra dollars, so I am going to go and shovel snow today," or, if it is the summertime, "I am going to cut some grass somewhere, here and there." Their approach to doing the work is very casual.

There is a significant difference between a casual worker and one who is operating in effect in industry or is working for someone who is operating in industry on a rather permanent-type basis. I would say that people who do this type of work, such snow shovelling, who do it constantly, can be covered or are covered by one means or another.

Hon. Mr. Ramsay: Has this ever arisen as a problem? Do you know of any--

Mr. Cain: I cannot say it has ever arisen as a problem. I do not recall ever seeing a claim where I have had to rule on the fact it was casual, but I am sure we have had claims. I am not for one moment suggesting we have not, but I have not had one.

Mr. Lupusella: This problem conflicts with the principle that if a worker receives remuneration from an employer he should be covered, if the employer is covered either under schedule 1 or schedule 2. Why are we excluding these people? This is my concern as well.

Mr. Kolyn: I have always considered casual workers to be people who do not do jobs on a regular basis. If, for instance, we decided we wanted the walls washed once a year and somebody came in here to do it, that would be a casual job, not like the fellow cleaning the floor every day. Logistically, what you are saying is that for every job that every person does in this country, it would be very hard to keep track of. It would be a horrendous job.

Mr. Lupusella: What do you mean by "working on a casual basis"? I know my employer. I know when I work. I get my paycheques. I should receive compensation.

Mr. Kolyn: Let us say you ask me to come and clean the walls. I say it is \$150. You say, "Fine." We agree. I came and did the walls and you gave me \$150.

Mr. Lupusella: I may be faced with a serious injury. Why should I not be covered?

Mr. Chairman: Let me throw out the example of firemen. There are many firemen who go out in the summertime, painting houses to such an extent--in our area it is almost every other house on the street--that it becomes a business. They are even going to paint the walls on businesses too. You call the firemen--

Mr. Laughren: Why do you pick on firemen?

Mr. Chairman: It could be anybody. I am just saying it is as good an example as any.

Interjections.

Mr. Chairman: They are not covered by the householder. If the guy injures himself, the householder's insurance covers him if he wants to sue. But when it comes to a business, is it the business's compensation that is supposed to cover that fellow who paints the building?

Mr. Lupusella: Unless you do not give out the work in the form of a contract in which you are responsible and you must have your own coverage.

Mr. Chairman: But when he paints the house--

Mr. Lupusella: If I am working for you on a temporary basis doing casual work and getting remuneration, even though I am not working on a daily basis, why should I not be covered?

Mr. Laughren: What if I hire your son to cut my lawn every two weeks all summer? Should I pay compensation?

Mr. Lupusella: And what if my son cuts his hand? Why should it not be covered? He could be faced with permanent disability for the rest of his life. Are you talking about a household or an employee of Laughren, the employer, with a company and so on?

Interjections.

Mr. J. M. Johnson: I need some advice. I own an apartment building. We have a lot of snow in the wintertime. I hire some students to shovel the snow. What coverage, if any, is there?

Mr. Kolyn: You should not give him free advice.

Mr. J. M. Johnson: This is a hypothetical question.

Interjections.

Mr. J. M. Johnson: It is 50 feet up. What if the kid falls and breaks his neck?

Mr. Cain: You are hiring them to clear the walks during the winter. Let me get an answer for you. There is a fine line there, and I am not going to say it is one or the other. I want to make sure of something before I respond, if you do not mind.

Mr. Sweeney: May I make one observation? It was brought to my attention that the Quebec Workers' Compensation Act deals with the last three or four issues we have been talking about in much more detail than ours does. I do not have access to it directly. Can you or one of your staff look at it from this perspective? It deals with this whole question of outworkers, casual workers and things like that. There may be some suggestions in it that would be helpful for the obvious difficulties we are having.

Mr. J. M. Johnson: I have one follow-up question and then I will let others speak. With all these people who are going to be covered, who is going to record that they are even working? Did they come out of the blue when they fell and hurt themselves? How do we keep track of them?

Mr. Cain: There is one point to be made. One must keep in mind that you have to establish whether a person is a worker of yours or a contractor. If he is a contractor, he would have to cover himself. You enter into that realm as well.

Mr. J. M. Johnson: Let us say you have students who know where there should be work. They contact you and ask for a job shovelling snow. Three or four times during the winter they shovel snow. There is no contract. They might come one time and not come back if the work is too heavy; so you get someone else.

11:40 a.m.

Mr. Cain: Suppose you pay them \$50 each time they shovel the snow. You make no deductions whatsoever. They come to the degree that when it snows, you want them there. You are perhaps exercising no supervision and control, although perhaps you are because if it is not done properly, there is a certain retribution--you will not rehire them. Then it comes down to whether they are contractors or workers of yours. There are a number of issues in question.

Mr. Havrot: I want to cite a situation that occurred last year when the Canada Employment and Immigration Commission was advertising, "Hire a Student". I had a phone call from one of the old age pensioners who wanted some painting done around the home. She asked the question, "What happens if the lad gets up on a ladder and falls off the ladder and breaks his neck, his arm or whatever?"

I phoned to get a clarification. They could not give me an answer. The only answer I got was that it could possibly be covered under the home owner's liability policy. I never got a clarification. I would like to know where the onus is and what the responsibility is in the event of an accident of that type.

Mr. Cain: Home owners do not have an obligation to cover people coming in to do work on their houses. They do not have to cover them with compensation. Home owners do not have to because they are not operating an industry.

Mr. Lupusella: We are talking about people working for their employers.

Mr. Havrot: That is different.

Mr. Lupusella: There is a clear definition of an employer in the act. The employer has to make up his mind either to give out the work in the form of a contract and not be faced with liability in the case of an accident, because the person has to look after his own insurance, or, if I have been hired on a regular basis, even though it is temporary work I should be covered if I am working for an employer. A lot of people are excluded from that.

Mr. Kolyn: The difference is that if you hire him he comes under your wages, but if you subcontract he does not come under your wages. That is the decision the employer has to make. If your son came to work for me to cut the grass, it should be up to him, not up to me to make sure he has compensation because he may be cutting people's grass other than mine.

Mr. Chairman: If the Quebec act does address this, perhaps we can--somebody can get back to us; I do not know who--put it on somebody's shoulder to get back to us with a definition from the Quebec Act to see whether that helps us out.

Mr. Sweeney: I have been advised that it could be helpful; that is all.

Mr. Chairman: Okay. The staff will look at that.

Mr. Sweeney: We might as well take advantage of somebody else's research.

Mr. Laughren: I do not know whether this is the right time to ask this or not. What is the definition of a "learner"? Is that someone who is, for example, in an apprenticeship program or is in some way receiving remuneration?

Dr. Wolfson: That is defined in the current act under clause 1(1)(q).

Mr. Laughren: Page what?

Dr. Wolfson: Page 3 of the existing act.

Mr. Laughren: It does not include--

Dr. Wolfson: It includes apprentice.

Mr. Laughren: It does not include student, does it?

Mr. Cain: No, because it ends up with the words "as a preliminary to employment".

Mr. Laughren: I had a strange situation where a student and a teacher--not at the same time--at the same school lost fingers in the woodworking shop. The teacher gets compensation and the student gets absolutely zero for the loss of all the fingers of one of his hands.

Mr. Wolfson: He could sue.

Mr. Laughren: He could sue, but you have to prove some kind of negligence.

Mr. Sweeney: It is the same as a kid in a physical education class who breaks his neck in the gym.

Mr. Laughren: This is not your problem, but I cannot believe that there is no form of insurance. It is another problem.

Mr. Kolyn: That is a different story. It is the same thing if you drown in a swimming pool on board of education property or something like that. Can you sue for negligence somewhere?

Mr. Sweeney: Can I take this one step further, now that Mr. Laughren has brought up the word "learner"? There is an increasing practice in secondary schools to provide co-op education, where a student goes out half a day a week or two or three half-days a week. In that case, does the employer cover that student because he is actually working on the employer's premises, or does he come under the continued jurisdiction of the school board?

Interjection: A co-op?

Mr. Sweeney: Co-op students. That is at secondary school. I am not talking about university.

Mr. Cain: Those students do not receive wages from the employers. I suppose it would also be possible that employers may not want to take them into their premises if they were obliged to pay. In fact, those students are all covered under the Ministry of Education.

Mr. Kolyn: Would that be considered a job experience program?

Mr. Cain: That is what it is, a job experience co-operative educational program.

Mr. Sweeney: They are actually working on equipment, performing industrial functions.

Mr. Cain: And they are covered for compensation by the Ministry of Education.

Mr. Sweeney: Okay.

Mr. Lupusella: I have another question on subclause (z)(iii), "a person deemed to be a worker of an employer by a direction or order of the board."

Are we talking about people receiving retraining by the Workers' Compensation Board where the board finds them a light job or whatsoever? It is on page 3 of the new act.

Mr. Sweeney: It does not need to be ordered by the board.

Mr. Cain: It gives the board the opportunity, just as it states there, to deem someone to be a worker. I cannot be any clearer than that at the moment but to say that opportunity is there in that subsection.

Mr. Sweeney: In other words, the board has the right, if there is a situation where someone seems to fall between the cracks, to deem that person a worker for compensation purposes.

Mr. Cain: That is correct. I am not certain that this example is precise, but you may have a situation where an employer might try to argue that someone is not a worker but, on the contrary, is a contractor. Yet when we look at it and look at the rules, we may decide, "No, that person is your worker; he is not a contractor, so you are obliged to pay an assessment on that individual's wages."

I believe this section would be one of the sections we might use in order to make that ruling.

Mr. Lupusella: I am a little bit afraid of this section, considering the present policy of the board.

What about an injured worker receiving his pension, receiving rehabilitation training from the board, sent to COSTI and considered to be unemployable, which means he is not a worker any more. That person is applying for supplementary pension, for example, in order to qualify that he is co-operating and is able to go out and search for a job and so on.

The principle of being unemployable contradicts the good intention of subsection 3 of the new act. Am I correct?

Mr. Cain: I do not think they are the same thing. What we are doing here is trying to clarify, or at least explain, when one is considered a worker at the time they are injured: are they a worker or are they not?

You are referring to the potential to pay people a supplement on the basis of whether or not they are co-operating in searching for employment, co-operating in a rehabilitation program in order that they can do that.

In that situation, what one is simply asking the individual is to participate in these programs. Perhaps that person would say, "I am unemployable; I cannot work." Therefore, we do not pay the supplement because they are not co-operating, but that has nothing to do with this definition of worker.

Mr. Lupusella: It is not that the worker says, "I am employable." It is, for example, COSTI or other training centres which define the worker as unemployable, which means that in that specific case a person who is considered to be unemployable is not a worker any more.

So what will the board's behaviour be in cases where the training centres define injured workers as being unemployable?

Mr. Cain: This section, with some changes, has been in the current act. I do not think you have ever seen the board use that section as a reason for not paying something.

Mr. Lupusella: Oh, yes.

Mr. Cain: This section?

11:50 a.m.

Mr. Lupusella: In the case where training centres are defining injured workers as being unemployable, if you apply for a supplementary pension and show the board you have been co-operative and have been searching for light jobs and so on, because of the definition of being unemployable that is accepted by the board, you do not win any cases of supplementary pension before the board.

Mr. Cain: But that goes towards the section on supplement. I do not believe you have ever seen the board cite clause 1(1)(z) as a reason for not paying a supplement. You have seen it cite subsection 43(5) as the reason, and that is because the worker is unemployable and therefore is not co-operating in a vocational rehabilitation program and so forth, as you are well aware. But it does not come back and use this section ever.

Mr. Lupusella: Considering the past policies of the board, I would not be surprised if it never used it based on that premise.

Mr. Chairman: Let us go on with subsection 1(9) of this part:

Subsection 1(2) of the said act is repealed and the following substituted therefor:

(2) For the purpose of this act,

(a) an authority who summons a person to assist in controlling or extinguishing a fire as mentioned in subclause (1)(z)(iv), shall be deemed to be the employer of the person;

(b) the crown in right of Ontario shall be deemed to be the

employer of a person who assists in any search and rescue operation as mentioned in subclause (1)(z)(v); and

(c) where the head of council of a municipality or the Premier of Ontario declares an emergency to exist as mentioned in subclause (1)(z)(vi), the municipality or the crown in right of Ontario, as the case may be, shall be deemed to be the employer of the person,

and the earnings of the person shall be the earnings in the person's regular employment calculated in accordance with this act or, if the person has no earnings, the earnings shall be fixed by the board.

Mr. Sweeney: The assumption in the first and second lines of those last three or four lines is that the person has been called into an emergency situation but that he or she has a regular job someplace else. It is the earnings in that other regular job that they are talking about, right?

Mr. Gillies: Yes, they are acting in this case as volunteers, but if they have another job that pays a regular wage, then that covers it. The board also has some leeway under this subsection to calculate what would be appropriate if it is not defined under the act.

Mr. Sweeney: That makes sense.

Mr. Chairman: Finally, subsection 1(10) says:

Subsection 1(4) of the said act is amended by striking out 'under section 44' in the 13th line and inserting in lieu thereof 'determined by the board' and by striking out 'subsection 45(1)' in the 14th and 15th lines and inserting in lieu thereof 'section 41.'

There cannot be much discussion on that unless you read the whole thing in total context. Is there any further discussion on definitions?

Mr. Laughren: Yes. To go back to page 2, clause 1(1)(n) as amended in subsection 1(5), this is perhaps minor: changing the word "industrial" to "occupational." I think the whole thrust of the act is occupational, and it very clearly establishes the link between work and disease more than "industrial" does.

Mr. Chairman: This is only redefining "industrial disease." It is "industrial disease," not "occupational disease," in the present act.

Mr. Laughren: Right. That is what I am saying: change it to "occupational." One reason I would like to change it is that we should not kid anybody. These diseases are caused by people at work, by their occupations. It is not some airy-fairy industrial kind of concept we are talking about here; we are talking about diseases as a result of the work that people do. Therefore, it is disease directly related to work. It makes that link clear. I think it should be done.

Mr. Kolyn: The problem you could run into is if you change it from "industrial" to "occupational." If you worked in a bank, for instance, and everybody except you smoked, you would not really be covered under the WCB because you are a clerk. There would be more litigation. If you have an industrial disease and you are in industry it is pretty well cut and dried. These people are covered under the act. How would you sort it all out?

Mr. Laughren: I would not even want to change it. The example that comes to mind immediately with me is the person who works in the asbestos plant and brings clothes home or a piece of asbestos--which happened at the Johns-Manville plant--and the child at home plays with the piece of asbestos, or the clothes are washed on a regular basis, that kind of thing. Other people around that house could get mesothelioma asbestosis. Under the present act they would not be compensated, would they? It would not be compensable. If you were prepared to accept those people as being legitimately compensable then I would say to leave the word "industrial" there. But you are not. You are not prepared to do that so let us put the word "occupational" in there so it is a more honest interpretation of the legislation.

Mr. Mancini: Even to (inaudible) I think it would be more honest to use the word "occupational" there. I think that is a much more up-to-date word to use. We do have the Occupational Health and Safety Act. It is a term we have been using.

Mr. Laughren: We do not have an Industrial Health and Safety Act. It is the Occupational Health and Safety Act.

Mr. Gillies: I am not speaking to the merit or lack of merit of your proposed amendment, Floyd, but we do speak of the Industrial Disease Standards Panel and so on. All I am saying is that this change would necessitate a number of other changes in the act, quite a number.

Mr. Revell: I would like to speak to that, Mr. Chairman. It would require a large number of amendments. First of all, to change it to occupational diseases you would have to move the definition. It would be out of order to have it as "an." You would have to make little changes like that.

The expression "industrial disease" does come up several times in the act. You are going to have to make specific amendments for that or come up with a formula for amending it.

The expression "industry" is used in this act specifically. I would think that a disease that results from an industry is an industrial disease. As you can see from the new definition of "industry," which is clause 1(1)(o) immediately following the definition now under discussion, it is an extremely broad definition of industry. I do not think it is used in the normal way. When I think of the expression "industry" I think of the factories out in the triangle.

Mr. Mancini: I think you make a very good point because the definition of "industry" is very wide-ranging, so it would

make much more sense if you had the word "occupational" there.

Mr. Laughren: If I lived in the vicinity of the uranium refinery in Blind River, for argument's sake because I do not want to debate this here today, and the escape of low-level radiation in the future results in cancer of the people in the community, if that was shown to be the case, under the present legislation those people would not be able to claim compensation even though it is an industrial problem. I think I am right.

Mr. Gillies: That is quite right.

Mr. Laughren: Right. So, therefore, let us not kid the troops that people will get compensation if it is an industrial disease. They will not. They will only get it if it is their occupation.

Mr. Revell: I would submit, Mr. Laughren, with respect to this, people would not be misled because the very act dealing with this is entitled the Workers' Compensation Act. We are not dealing with people outside--

Mr. Laughren: Right.

Mr. Revell: --the ambit. People look to the Workers' Compensation Act to find out what is available to workers. They look to whatever other law is available with respect to the nonworker situation, whether that be the common law or any other statute law may be available for the system.

12 noon

Mr. Laughren: I happen to agree with you. I could embrace you because that is exactly--let us be consistent. It is a workers' compensation act, so let us talk about occupational diseases.

Mr. Revell: That is a policy choice. If somebody wants to give me instructions.

Mr. Laughren: I understand that. This government has never before been uptight about bureaucratic problems. It wallows in them. Even if it necessitates a few changes to the legislation to make it consistent, I do not think that should bother--especially the parliamentary assistant.

Mr. Gillies: I am going to ask Dr. Wolfson to speak to this, but I think there is more to it than just the change of a word or definition. As was alluded to earlier, the act speaks to people working in an industry, to injuries taking place in an industry, diseases developing within an industry and so on.

Mr. Mancini: It does not relate to people working just in an industry. It relates, as clause 1(1)(o) states, to an "establishment, undertaking, trade and business."

Mr. Laughren: Are you worried that--

Mr. Gillies: Perhaps I might just reply to that one. That is the point. The things you just listed are the definition of industry. As counsel said a minute ago, it is such a broad definition that I really do not see what the problem is.

Mr. Mancini: The word "occupational" would better represent the definition than the word "industry."

Mr. Laughren: Is the amendment too ideological for you?

Mr. Gillies: Nothing is too ideological for me. May I ask Dr. Wolfson to speak to this?

Dr. Wolfson: I guess I do not understand the ideological subtleties here. We can define terms any way--

Mr. Laughren: This government does not recognize the working class in this province. That is why.

Dr. Wolfson: --we like, but to pick up Mr. Gillies' point, the act is framed in terms of industry because it assesses employers within industries and it compensates workers for injuries or illnesses encountered when they are working for employers in industries. It is on the basis of their attachment to an industry that both the assessment and the compensation is determined. Frankly, it is not on the basis of their membership in an occupational group.

If someone contracts a certain kind of injury or disease because he is a plumber or pipefitter and goes from establishment to establishment, we do not define his compensation on the basis of his membership in the occupational group, but on the basis of the employer or the industry to which he was attached when he contracted the disease or injury.

I think the thrust of this act is in terms of definition of an industry rather than of an occupation. It seems to me entirely consistent with the thrust of the Workers' Compensation Act.

Having said that, I do not think a whole lot turns on the definition.

Mr. Laughren: I agree with you there. A whole lot does not turn on it, and I apologize if we struck an ideological nerve.

Mr. Gillies: We would have hoped that your theological concerns were taken care of by the fact that it is the Workers' Compensation Act, not the Industrial Compensation Act.

Mr. Laughren: Ideological, not theological.

Mr. Gillies: I was twisting it a bit.

Mr. Chairman: Can we move a little further?

Mr. Laughren: Why are you moving?

Mr. Lupusella: We want to change that. There is an amendment.

Mr. Chairman: I guess the only way we are going change it is by way of a motion.

Mr. Laughren: We have not had any motions.

Mr. Chairman: We have not had any motions up to this time. Let us deal with the total package of definitions after we get some more definitions of some of the definitions that we have been after, and deal with all motions at one time. Is that agreeable? Do you want it for the whole clause and deal with the total package at a later opportunity after going through the rest of the act? We might clarify things further down the road on some of these points.

Interjection: It is a remote possibility.

Mr. Chairman: I think everybody understands me perfectly and we will move on to section 2.

To be formal about it, shall section 1 be stood down? Do we have a motion that way?

Mr. Sweeney: I so move.

Mr. Chairman: Shall section 1 be stood down?

Motion agreed to.

Mr. Chairman: We are at the bottom of page 4 where it says, "Big 2." It is, "2. Section 2 of the said Act is repealed and the following substituted therefor"--

Mr. Sweeney: "Big 2" sounds like Sesame Street.

Mr. Lupusella: I would like to have further clarification on subsection 1(10): "Subsection 1(4) of the act is amended by striking out 'under section 44.'" Section 44, I guess, is on page 26. Doug, am I correct?

Mr. Cain: It is.

Mr. Lupusella: Are we talking about the note down here? "Section 44 is re-enacted by the Statutes of Ontario, 1982, chapter 61."

"In the 13th line." Which line are we talking about? "...temporary partial disability, a proportionate amount in accordance with the impairment of earning capacity"? Is that the one? Determined by the board? Where is the insertion?

Mr. Revell: Sorry, Mr. Lupusella. The line counts may not quite match up. You are working, presumably, from the blue book.

Mr. Lupusella: Yes.

Mr. Revell: The line counts are all based on the official text as published in the Revised Statutes of Ontario.

These blue volumes are put out from time to time to incorporate any amendments. From the point of view of the printing process, which is something I do not understand, the line counts may change.

Mr. Lupusella: That is why I was unable to relate the change. Can we find exactly where this change is taking place?

Mr. Sweeney: It is the third line from the bottom on page 5.

Mr. Revell: Yes, the third line from the bottom on page 5 of the blue book.

Mr. Lupusella: Page 5.

Mr. Revell: Concerning the first change, in subsection 1(4) the line reads, in my volume, at any rate: "amount of compensation under section 44 or more than the maximum rate of annual earnings."

Mr. Lupusella: I have a different book again.

Interjections.

Mr. Mancini: Mr. Chairman, are we getting updated versions of these?

Mr. Chairman: Yes. I just asked the clerk if we could get some copies.

Mr. Lupusella: "Under section 44 in the 13th line"--

Mr. Revell: The words that read "under section 44" in that line become "determined by the board."

Mr. Lupusella: The minimum amount of compensation will be determined by the board?

Mr. Revell: Yes.

Mr. Gillies: Then the words "subsection 45(1)" become "section 41."

Mr. Lupusella: Yes. Why "determined by the board" when we have legislative changes that emphasize really what the amount should be?

Mr. Sweeney: Because they change from year to year.

Mr. Lupusella: Right. So why should it be determined by the board and not by the Legislature, for example?

Interjection: These are volunteer firefighters.

Mr. Lupusella: I am sorry. That is right. It is a little bit confusing here.

Interjection: It may be the butcher who runs out and jumps on the fire truck.

Mr. Lupusella: Okay. I am sorry.

Interjection: Fire or ambulance.

Mr. Gillies: The only effect this clause has is that for volunteer fire or ambulance people the board needs some leeway in determining what the compensable earnings should be.

Mr. Lupusella: Now it is clear. I would have a measure of concern if it affected other workers.

Mr. Chairman: I am glad we got that point clarified.

Interjection.

Mr. Chairman: Now we all understand totally about that situation.

Mr. Lupusella: I am sorry about this.

On section 2:

Mr. Chairman: I am not going to repeat what I said previously at the bottom of page 4. Moving on to the top of page 5, section 2 would then read:

2. A reference in this act to schedule 1, 2, 3 or 4, is a reference to schedule 1, 2, 3 or 4, as the case may be, in the regulations.

2a. Where the services of a worker are temporarily lent or hired out to another person by the person with whom the worker has entered into a contract of service, the latter is deemed to continue to be the employer of the worker while the worker is working for the other person.

12:10 p.m.

Mr. Lupusella: In other words, if there are two employers and one of them requests a worker for a day or too from the other and the worker gets injured, the employer who sent the employee to the other employer is responsible for the accident; is that it?

Mr. Gillies: Yes, the original employer. If you worked for me--which I am sure would be very distasteful for you--but one day you went to work for Floyd as an employee of mine and you were injured there, you would still be my employee.

Section 2 agreed to.

Mr. Chairman: How about that? We accomplished something.

On section 3:

Mr. Chairman: Section 3 of the said act is repealed and the following substituted therefor:

3(1) Where in any employment, to which this part applies, personal injury by accident arising out of and in the course of employment is caused to a worker, the worker and the worker's dependants are entitled to benefits in the manner and to the extent provided under this act.

Mr. Sweeney: Mr. Chairman, we were dealing with this once before. The issue came up about a worker who is, say, in an isolated lumber camp or on a ship and is not actually working at the time. The words I have underlined are "accident arising out of and in the course of employment." We kind of left that hanging.

Mr. Gillies: As I recall, Mr. Sweeney, Mr. Cain told us at the time that the current board practice or interpretation has been that somebody working on board a ship who is covered by this act, if he is injured at all on the ship, regardless of whether he is actually working or not, he is covered and it is compensable. What is the case in a lumber camp? I do not know.

Mr. Sweeney: In other words, they are back in an isolated lumber camp and it is almost as if you were on a ship; in other words, you cannot get off.

Mr. Cain: In most cases they are also covered when they are in the bunkhouses and so forth. It is very difficult to define "arising out of and in the course of" very precisely because, as you just described, there are industries where the peculiar nature of the industry requires the person to do certain things and in some cases we consider them workers when in fact they are not working.

Mr. Sweeney: They are not actually on their particular shift.

Mr. Cain: They are not actually doing the job. They are still in the course of their employment, though one might want to say the accident did not arise out of it because they were not doing something they were hired to do; but they were doing something reasonably expected of them.

Mr. Gillies: I should caution that, as I recall our discussions back in July, a seaman can leave a ship during a voyage, or be on the dock or even the gangplank, and he may not be covered.

Mr. Cain: We were referring to the Welland Canal. In the case of seamen, as soon as they enter the lands of I think the St. Lawrence Seaway Authority--I believe they own the lands running up and down the Welland Canal--they are considered in the course of their employment unless something very peculiar is going on at the time. They are covered once they enter that area.

Mr. Sweeney: In other words, technically they are on the employer's property.

Mr. Cain: Technically they are on the employer's property, though in fact the ship owner does not own it and the

ship is maybe moving up the canal for them to get on it. So there is some fairly broad application to this.

Mr. Sweeney: So what you are telling me is that, under the present practice, in the two situations I described, the lumber camp and the ship, the worker is covered literally 24 hours a day.

Mr. Cain: Yes, unless something untoward occurs; that is right.

Mr. Laughren: If I did not know better, I would have to think that is not a bad policy, but in fact that is not quite the way it works. I personally know of an example where a worker got hurt leaving the premises and was denied compensation.

Mr. Cain: Was he on the company property?

Mr. Laughren: All on company property.

Mr. Cain: I would have to know the circumstances because, as you know, in normal circumstances as long as they are on company premises they are covered.

Mr. Laughren: No. This particular man, an old man, was riding a motorcycle--

Mr. Kolyn: An old man?

Mr. Laughren: Yes, he is almost 70 or he may be over 70. He rides his motorcycle to work. This was in a Chapleau lumber mill where they own all the land. According to the company, he was not supposed to be riding his motorcycle in that particular place, but I believe it was common practice for him to do it. He was injured--he broke his leg pretty badly--and was denied compensation.

Mr. Cain: I will give you an analogy to that. A worker walking on a company parking lot going home or going into work is covered under the act if he slips and falls or whatever. If that worker is in a vehicle--his own vehicle, for example--and he strikes another worker's vehicle, then he is not covered under the Workers' Compensation Act.

Mr. Laughren: No, but there is insurance under the--

Mr. Cain: They have the right of action.

Mr. Laughren: But there is automatic insurance, compulsory insurance, because he is in an automobile.

Mr. Cain: Yes, you are quite right. But as soon as the worker enters his automobile, he is no longer covered under the Workers' Compensation Act--

Mr. Laughren: No.

Mr. Cain: --in spite of the fact that he is still on the employer's premises.

Mr. Laughren: But he is covered under some other compulsory act.

Mr. Cain: Yes. He has insurance.

Mr. Laughren: I do not like the way you imply that there is almost blanket coverage for workers; there is not. In the example I gave you, this guy is going to get nothing.

Mr. Cain: Yes, I would expect he would get nothing. You are quite right.

Mr. Laughren: I just do not think that is right, that is all. He was on company property. He would not have been injured unless he had been at work.

Mr. Cain: It also probably depends on what caused the accident, and I do not know the cause of that accident.

Mr. Laughren: That is what I said. You are bringing fault into it now.

Mr. Kolyn: He was talking about those specific circumstances that John was mentioning, where you are isolated and you cannot get off. That is what he was really addressing, Floyd.

Mr. Cain: What we are talking about is a private vehicle. Then you have to look at whether the employer was contributing to the cause of that accident, in spite of the fact that the injured worker was on a private vehicle in this case.

When you get into "arising out of and in the course of," as you leave the area of work, it becomes more complex to decide and adjudicate. The rules are fairly liberal, though in some ways, as you have described, there are still strictures.

Mr. Laughren: I do not know how to resolve it. I do not know how you amend this to make sure that people who are on company property and are injured, just because they are leaving or are moving around the company property, are covered. It seems to me that is in the course of their employment. I do not know how to change it. I do not know what better wording to use.

Mr. Lupusella: What if they get injured at lunchtime, while on the employer's property? Are they covered?

Mr. Cain: During lunchtime, in most cases, injured workers are covered. However, if they were out on the employer's property playing a game of soccer, they would not be covered if they were hurt.

Mr. Lupusella: If they were playing.

Mr. Cain: That is right. It is part of the policy that we do not pay for that. Again, it is a judgement decision by the

board to say, "At what point does coverage for workers' compensation no longer exist?"

Mr. Laughren: That is why we need a comprehensive social insurance system.

Mr. Chairman: I wondered when you would get to that.

Mr. Kolyn: Wait until you get to the House for that one, Floyd.

Mr. Chairman: Can we move on? Is there any further discussion on subsection 3(1) besides across the table? We will move on to subsection 2.

"Where a worker is entitled to compensation for loss of earnings because of an accident, the employer shall pay to or on behalf of the worker the wages and benefits that the worker would have earned for the day or shift on which the injury occurred as though the injury had not occurred."

Mr. Lupusella: This is very unclear, Mr. Chairman. What about when the employer does not want to pay for the rest of the day? Let us say I am working and I get injured around 11 o'clock. From what time to what time does the employer have to pay me for the rest of the day, in theory?

Mr. Kolyn: All day.

Mr. Lupusella: All day. Okay. What about if the employer does not want to pay me?

Interjections.

Mr. Lupusella: The exact provision that--

Mr. Gillies: Many of them do it anyway, but under this act they will all have to.

Mr. Lupusella: Okay.

12:20 p.m.

Mr. Chairman: Subsection 3(3): "Where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment and, where the accident occurred in the course of the employment unless the contrary is shown, it shall be presumed that it arose out of the employment."

Subsection 3(4): "Where an injury is attributable solely to the serious and wilful misconduct of the worker, no benefits or compensation are payable unless the injury results in death or serious disability."

Mr. Laughren: No, Mr. Chairman.

Mr. Chairman: You have a concern about that?

Mr. Laughren: Yes, I certainly do. This section should be deleted. It really bothers me. It is discriminatory and arbitrary. At the same time you want to put this into the act you want to remove any claims against the executives of the company. You cannot have it both ways in the world I live in. I guess in the world of majority Tory government you can.

I do not like this idea of bringing in fault. If you insist on doing this then you have an obligation to also talk about the serious and wilful misconduct of the employer. I want to tell you, if you can sustain an argument that there was not serious and wilful misconduct on the part of Johns-Manville, I surely want to hear the argument.

I do not know how you can put this section in while not having that section in for employers as well. I await your response. I wish the minister were here too.

Mr. Mancini: Before you respond, for curiosity I would like an example of serious and wilful misconduct in the work place.

Mr. Cain: What is the policy?

Mr. Mancini: I would like an example.

Mr. Cain: All right. Perhaps the employer has a door in the factory and does not want anyone to use it. They have a sign posted that says, "Do not use this door to enter or leave," because there is a four-foot drop outside. Every day a few workers do use it and the employer does nothing about it. One day the employee opens the door and falls and breaks his leg. That claim would be allowed.

If a similar situation existed but the employer, aware that these employees are leaving through this doorway it has posted saying it should not be used, has perhaps disciplined them in some way--a day's suspension, or whatever--yet this employee continues to do it, we would consider it serious and wilful misconduct, because the employer has demonstrated that this person is carrying out a practice it wants stopped and it has tried to stop it.

However, if that injured employee is off work six weeks or more, then the claim will be allowed. It cannot be simple negligence.

Mr. Mancini: I see your concern. At the same time, I have to concur with my colleague Mr. Laughren; you know as well as I do that there are employers who are informed about safety problems they have at their work place and not very much is done about it. These cases are real, and we know about them. We really have no recourse, as was stated, against the directors and executive officers. In my view, that in itself would be enough to have subsection 4 struck out.

At the same time, I do want to put on the record that it is wrong for anyone to flagrantly disobey instructions that have been placed on the floor of the plant or at the work site for the

safety of the worker. I concur that is wrong. But at the same time, I find what you want to do here in complete contradiction of the policy as far as directors and executive officers are concerned. I will leave it at that.

Mr. Gillies: The philosophy of what the two critics are saying is that it cannot be argued. Of course, there has to be give and take on either side. I am just looking for the appropriate section. I know there is a section in the Occupational Health and Safety Act under which the liability of negligent employers and agents of employers is established. I hope if we can find that, it might satisfy your concerns. It is in that act and not in the Workers' Compensation Act.

I just want to assure you that there is no intent on the part of the government to take them off the hook for negligence. I think it is in the other legislation.

Mr. Laughren: I thought we all agreed a long time ago that there was a historic tradeoff made that, in return for no-fault compensation for injured workers, they would not sue their employers. To me that was an acceptable tradeoff that was made. I do not think any of us disagree with that.

Basically, I think both sides benefit if you have no-fault compensation. In return for that, we will keep it out of the courts. I think most of us accept that underlying principle of workers' compensation. If you do, I do not think there is any place for subsection 3(4) of this act, because you and I know that is open to interpretation.

Mr. Gillies: As I say, I think the arguments put forward by my friends are quite persuasive, and if you would allow me to take another look at this and take it up with the ministry, we will certainly respond.

Mr. Mancini: I thank you for doing so, but I just want to add one point. Under the Occupational Health and Safety Act there is a section where workers can be charged for "serious and wilful misconduct." It is specified in the act for workers and for the employers, as you have already informed us. To keep things consistent, it might be appropriate to have both specified here, to have both or either in one piece of legislation as opposed to--

Mr. Gillies: Both or each.

Mr. Mancini: Both in each.

Mr. Sweeney: Both or none.

Mr. Mancini: Both or none, as my friend says.

Mr. Gillies: We will certainly have a look at that, and I appreciate the arguments you have put forward.

Mr. Chairman: Can we get an answer right after lunch?

The committee recessed at 12:27 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

THURSDAY, SEPTEMBER 6, 1984

Afternoon sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)
Gillies, P. A. (Brantford PC)
Havrot, E. M. (Timiskaming PC)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Kennedy, R. D. (Mississauga South PC)
Laughren, F. (Nickel Belt NDP)
Lupusella, A. (Dovercourt NDP)
Mancini, R. (Essex South L)
Riddell, J. K. (Huron-Middlesex L)
Sweeney, J. (Kitchener-Wilmot L)
Yakabuski, P. J. (Renfrew South PC)

Substitution:

Kolyn, A. (Lakeshore PC) for Mr. Villeneuve

Also taking part:

Gillies, P. A. (Brantford PC), Parliamentary Assistant to the
Minister of Labour

Clerk pro tem: Carrozza, F.

Staff: Revell, D., Legal Counsel

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation
Board

Hess, P. A., Director, Legal Services

Muir, C., Researcher

Wolfson, Dr. A. D., Assistant Deputy Minister, Program Analysis
and Implementation

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, September 6, 1984

The committee resumed at 2:19 p.m. in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT
(continued)

Resuming consideration of Bill 101, An Act to amend the Workers' Compensation Act.

On section 3:

Mr. Chairman: I will call the committee to order. Before the recess for lunch, Mr. Gillies undertook to obtain some information for us in regard to subsection 3(4) about "serious and wilful misconduct."

Mr. Lupusella: He is so efficient.

Mr. Chairman: Please; we sent him out to do a job and he has done a job.

Mr. Gillies: Thank you. Print it in Hansard that way.

I had a little conference with our officials at noontime. I was not able to talk to the minister because he is at the economic conference, but I feel confident enough about this that I am going to take the rap, as it were.

We feel it is very important that the no-fault nature of the act be maintained, and that there be the appearance of a no-fault act as much as the substance. I am not convinced that subsection 3(4) would cause as serious a problem as Mr. Laughren perhaps thought. However, in the interests of equity I am going to suggest that we delete that clause from the bill.

Mr. Chairman: Is there any further discussion? That being the case, apparently the easiest way to delete that is by voting against it and that deletes it. I am so advised by the clerk. That being the case, we should pass subsections 3(1), 3(2) and 3(3). Shall those three subsections carry?

Mr. Laughren: When we broke for lunch, I was talking to Mr. Hess, whose finely honed legal mind has been applied to labour legislation a lot longer than my finely honed nonlegal mind. He was concerned about the ramifications of this, that it could end up being more detrimental than helpful to workers. I do not fully understand what he is saying, but you might want to get his opinion on it.

Mr. Chairman: Can we get up to subsection 3(4) by passing subsections 3(1), 3(2) and 3(3)?

Mr. Sweeney: Yes.

Mr. Laughren: You were going to do some consulting about "in the course of the employment" were you not?

Mr. Chairman: What was that?

Mr. Laughren: There was nothing in abeyance then?

Mr. Chairman: I do not think there was on that.

Mr. Gillies: I have some stuff that Mr. Sweeney wanted about the definition of "worker."

Mr. Sweeney: I was satisfied with the questions I raised.

Mr. Chairman: Shall subsections 3(1), 3(2) and 3(3) carry? Carried.

Mr. Lupusella: On subsection 3(4), if we are going to--

Clerk of the Committee: It is going to be deleted. Just say, "Should the section carry?" You simply say no and that is it.

Mr. Laughren: There is the clerk trying to cut off debate again.

Clerk of the Committee: Not at all; I am just explaining the procedure.

Interjection: That is not a bad idea.

Mr. Lupusella: Even though I understand the point that was raised by my colleague, at least there is clarification and a clear principle spelled out that, when the injury results in death or serious disability, compensation should be given to the worker in the case of misconduct. By deleting the section, what sections are going to prevail under other statutes in Ontario that consider the issue of misconduct?

Mr. Gillies: Mr. Hess, if we delete that subsection, what do we have?

Mr. Hess: You ask, if you delete this section, what other statutes will prevail? This statute speaks solely to the compensation of workers and it is the one that governs. The rights of workers in case of serious and wilful misconduct would be governed under this particular statute, not any other one.

Mr. Laughren: What if it is deleted?

Mr. Lupusella: What if it is deleted?

Mr. Hess: All right. That gets down to the real nuts and bolts of it. I have this view of it. Assuming for a moment that the accident arises out of and in the course of employment. Let us assume the worker was guilty of serious misconduct. I can foresee where arguments advanced by employers would arise that because the

worker was guilty of serious misconduct, the accident no longer arose in the course of his employment. It has always been my understanding, rightly or wrongly, that this section, despite what it seems to be at first blush, actually was of assistance to a worker in those cases.

Suppose an employer had an inviolate rule that a worker must wear pullback guards in operating a punch press. Let us suppose the worker found they were uncomfortable, painful to him. He wilfully misconducted himself by not putting on the pullback guards. He lost a hand. Certainly the way subsection 3(4) reads, it would be my opinion subject to what the board and appeals tribunal concludes that he could not be denied compensation.

This section has been in this act since 1913. It goes back right to the beginning to the principle of the tradeoff, as Mr. Laughren put it; whether or not a worker was negligent he would still get his compensation. This still may have a purpose in some cases, perhaps a very few.

I can foresee where it might be of some advantage to retain it, but this is for the committee to judge. I simply add those words of caution.

Mr. Lupusella: The points you just expressed came to my mind. Even though I understand the argument raised by my colleague, I understand that at least a quarter of the benefits are awarded in the case of misconduct, where the injury results in death or serious disability. The injured worker will be paid in spite of that situation. Even though I understand the argument he made, at least there is some provision in favour of the injured worker if there is serious disability or death.

Mr. Laughren: I do not share the concerns of Mr. Hess and Mr. Lupusella because in the course of employment, that is an overriding principle anyway. Regardless of anything else, it has to be part of in the course of employment or whatever the precise language is, so that would still hold true anyway. I do not see how that would be altered.

Mr. Gillies: My feeling is that subsection 3(1) will still prevail. It says right there, "Where in any employment" and so on.

Mr. Laughren: It does not say "serious or wilful misconduct," it says "serious and wilful"; therefore leaving a guard off would hardly be considered wilful. It might be considered careless.

Mr. Gillies: Negligent.

Mr. Sweeney: Wilful means deliberate, does it not?

Mr. Laughren: I think it does.

Mr. Kolyn: What if you have a situation where in the work place there was horseplay--wrestling, arm-wrestling or whatever--and workers inadvertently got into an accident? That is where this would apply.

Mr. Laughren: That word "inadvertent" there, that you used yourself, I think is the appropriate word. It would imply it was not wilful.

Mr. Sweeney: It would not be wilful.

Mr. Kolyn: You can have that kind of situation whereby even though they were doing something they were not supposed to be doing in the work place, in cases of a serious injury a worker would get compensation. If you do not have that in there and this situation arose, the employer would have a pretty good case. He could say, "Well, he was not doing what he was supposed to be doing." If you take it out, you really take out the bit that I think is of benefit to a worker unless the injury results in death or serious disability.

2:30 p.m.

Mr. Laughren: I see your point, but say you leave this in, for argument's sake; the employer could still make the same argument that it was not in the course of employment.

Mr. Kolyn: That is true, but this reinforces it. Maybe you are right that they were not doing exactly what they were supposed to be doing, but the fact is that the man lost his hand and that is enough pain and suffering for a little bit of horseplay. He is still going to get his compensation.

Mr. Gillies: If I may, horseplay is a different situation, which is covered elsewhere.

Mr. Kolyn: I was just using that as an example. It could be other situations.

Mr. Sweeney: Can someone tell me how the word "serious" is interpreted? That is a pretty broad expression.

Mr. Cain: Are you referring to "serious and wilful misconduct" or to "serious injury"?

Mr. Sweeney: The word "serious" is used in two places, talking about serious misconduct and serious disability.

Mr. Cain: Serious disability is an injury that causes the worker to be off work for more than six weeks or results in a permanent disability.

Mr. Sweeney: Okay. What is serious misconduct?

Mr. Cain: Serious misconduct is the thing we are looking for all the time. When the employers tell us there was serious and wilful misconduct, we go out to determine that. It is true that if a worker left a guard off a machine and as a result was hurt, you would consider that serious. However, if the rules were not applied by the employer, such as warnings given to the worker to put that guard back on, and if the worker perpetuated the practice and was not given a suspension or some such thing--

Mr. Sweeney: In other words, it was not being taken seriously.

Mr. Cain: --then we would say it is not serious and wilful misconduct. We rarely ever apply serious and wilful misconduct--not very often. And we investigate every one of them to make certain from our perspective that it is serious and wilful misconduct.

Mr. Gillies: Perhaps you could explain, Doug, if we were to remove this clause, how a complaint of that nature by an employer would be dealt with.

Mr. Cain: If the clause were removed, the employer could no longer say there was serious and wilful misconduct and we would not be able to do anything about it. In that kind of situation we would just say, "It was an accident that arose out of or in the course of the employment, and the claim is allowable."

Mr. Lupusella: You have to demonstrate that from both sides, from the employer's perspective and from the worker's perspective. In the case of misconduct, with this particular clause, if the worker is seriously injured or dies on the job as a result of misconduct, he will be paid. It is as simple as that.

Mr. Cain: That is right. He would be paid even with this section present.

Mr. Lupusella: Even though the employer is going to appeal the decision of the board as a result of this subsection, the worker will win the case.

Mr. Cain: Then we simply write to the employer and tell him that the section of the act states this.

Mr. Lupusella: I understand what Floyd is saying as well. Maybe there is a way to rephrase this section which would eliminate any doubts.

Dr. Wolfson: I want to pick up on Mr. Laughren's point. Pragmatically, what may happen now is that an employer may allege there was serious and wilful misconduct and require the board to investigate it. Where the board investigates it and cannot determine that there was serious and wilful misconduct, the appeal is rejected and the person is paid.

Were this section to be removed--coming back to your earlier point--the contention would be whether or not the injury occurred in the course of or arising from employment. That then would be the arena for adjudication.

Mr. Sweeney: I am sorry. I do not follow that line of argument. I did not understand it the first time, and I still do not understand it. If a man is actually at work and performing a work-related function, even though he is doing it incorrectly, and even illegally as far as the employer is concerned, how can you say that is not at work?

Mr. Laughren: He may not be doing that.

Dr. Wolfson: He may not be doing a work-related function.

Mr. Cain: To administer "arising out of and in the course of," one has to create some kind of definition. I will read you the definition which enables one to say that some accident arose out of the employment.

"Employees are entitled to compensation benefits if injured by accident when performing the duties assigned to them by the employer or while they are doing something that might reasonably be expected of them during the course of their employment."

Mr. Sweeney: In other words, if they were doing something they were not assigned to do that could be ruled--

Mr. Cain: If it is not something reasonably expected of them.

The point Dr. Wolfson is making is that it becomes argumentative "when performing the duties assigned to them by the employer." An employer might argue, "Yes, they were doing duties assigned but not the way they were directed to do them." Perhaps one could get into an argument there. I do not know. One can see that it might happen.

Mr. Sweeney: I can see how you can stretch it. I do not think it would happen that way, but I can see the point you are making.

Mr. Kolyn: That is not wilful misconduct. Wilful misconduct is doing something on the job that is not related to the job. That is the way I would put it.

Mr. Gillies: Exactly. But let me bring this back to where we started. I certainly do not have the experience in this that my friends do, but my interpretation would be that if you were doing your job but doing it incorrectly, I do not think that would ever have been adjudicated under that clause. The overriding clause in this section--

Mr. Sweeney: But you are doing something deliberately. "Wilful" means you know what you are doing. You are using your will. It is deliberate. It is not an accident. It is not fooling around. You deliberately intended to take that guard off; it did not fall off. You did not notice that it was not there. You took it off. It is deliberate.

Mr. Gillies: Would such an action be considered misconduct as defined here?

Mr. Cain: Yes. The way we administer this particular section is that our first question is, did the accident arise out of and in the course of employment? If it arose out of employment in that the person was doing something expected of him, something he was hired to do, then we have gone beyond that step. But if there is serious and wilful misconduct while carrying out these duties assigned, then the claim can be denied under the circumstances described.

You have to get past the "arising out of and in the course of" first. That is why--I hope I do not confuse it further--horseplay and larking are not part of serious and wilful misconduct. On the contrary, they are embedded in the "arising out of." Are they doing something they are hired to do or reasonably expected to do? Horseplay and larking are not, in the board's opinion, things a person is reasonably expected or hired to do. That is why that claim is denied.

Mr. Sweeney: We had a case where there was a big punch press. To avoid an accident, the employee had to hit two buttons simultaneously. It was impossible to have your hand near that press. One guy hot-wired the two things so all he had to do was hit one. He injured his hand, but he was compensated because he was on some kind of a piece system. There was an incentive to push through as much work as possible within a short time. The argument was made that he was literally coerced into doing it. In other words, circumstances are taken into consideration.

Mr. Lupusella: I have a case that might clarify the situation.

Mr. Chairman: Mr. Laughren was first.

Mr. Laughren: There are two things still bothering me. One is having a fault system on behalf of the workers only. That is what this is. Second, there is the difference between "serious injury or death" and not serious injury or death. How do you justify not compensating when it is not a serious injury or death but compensating when it is? If you are going to be wilful, you had better make it serious. I may be facetious there, but it seems illogical to me. You know logic permeates the very soul of the New Democrats.

Interjections.

Mr. Sweeney: You were doing great until that last comment.

Mr. Laughren: Those are points that need to be addressed.

2:40 p.m.

Mr. Gillies: In response to the first part, this is where I found the argument made this morning to be valid. The reference in terms of the responsibility of executive officers and so on is in the Occupational Health and Safety Act. Having checked that, there is no reference in that legislation to "wilful or serious misconduct" on the part of officers; so the situation is somewhat unbalanced.

We did believe, on reflection, that to leave this clause in this act with no compensating clause on the other side of the fence did seem to attribute fault in what is supposed to be no-fault legislation.

We believe that the problems which could arise that were being adjudicated under subsection 3(4) will be adjudicated

anyway; the legitimate problem is under the overriding clause. It will be established and it will continue to be established by the board whether an injury did arise out of actions that could legitimately be attributed to the person's going about his employment or whether he was doing other things that cannot reasonably be expected to arise out of employment.

In other words, claims will still be denied for horsing around, doing things wrong and so on, but it will not have the appearance of being as unfair as this clause makes it appear.

Mr. Laughren: What about the serious-nonserious aspect?

Mr. Gillies: That, as Doug said, is currently adjudicated on the time lost and what was the other criterion?

Mr. Cain: Whether it is a permanent disability or six weeks' lost time from work.

Mr. Gillies: Permanent or temporary injury.

Mr. Laughren: What is the logic in it?

Mr. Cain: I can only go back to what was said before. The section was put in the act originally in 1913 for some reason--

Mr. Laughren: I knew the Tories were backward, but I did not know that.

Mr. Cain: I assume the proviso was put in at least to protect the injured worker when he was seriously hurt, just as it says, so that in spite of perhaps serious and wilful misconduct, if the worker was badly injured he was not left out of the whole program.

Mr. Kolyn: During the preliminary hearings was any reference made to this particular section by any of the groups? Were they concerned about it? Did they want it taken out? Was it brought up? Can anyone recall?

Mr. Mancini: No, but we are concerned about it.

Mr. Kolyn: That is fine.

Mr. Chairman: No, I do not think there was.

Mr. Gillies: There was no representation on it, as far as we know, by any group.

Mr. Laughren: Anyway, I will support the parliamentary assistant.

Mr. Chairman: In the removal thereof. Shall subsection 3(4) carry?

Interjection: No.

Mr. Lupusella: Let us postpone the vote, Mr. Chairman. Let us think about it.

Mr. Laughren: I think maybe the parliamentary assistant needs to restate his position.

Mr. Gillies: The position of the ministry is that we will be deleting that subsection.

Mr. Chairman: Shall the subsection carry?

Interjections: No.

Mr. Sweeney: It does not make any difference if it is going to be deleted.

Mr. Gillies: That is how you get rid of it.

Mr. Chairman: I am advised that this is how you get rid of it instead of voting on it. That one, therefore, does not carry.

Subsection 3(5) says, "In determining any claim under this act, the decision shall be made in accordance with the real merits and justice of the case and where it is not practicable to determine an issue because the evidence for or against the issue is approximately equal in weight, the issue shall be resolved in favour of the claimant."

Mr. Laughren: Are you reading that with a straight face?

Mr. Chairman: I had trouble reading it.

Mr. Laughren: Yes. I think it was because you could not do it with a straight face. Is this the old benefit of the doubt?

Mr. Chairman: It appears to be.

Mr. Laughren: That is what it means?

Mr. Gillies: Yes. It is the "benefit of the doubt" provision. That provision is not stated specifically in the current act; so we are specifically putting something in to clarify what has been an ongoing practice.

Mr. Chairman: Shall that subsection carry?

Interjection: Are you not in agreement with that?

Mr. Laughren: Yes, I agree with the statement. I just wish it were implemented more often.

Mr. Chairman: Subsection 3(5) carries.

Subsection 3(6) says, "Where the worker has not been paid the wages and benefits prescribed by subsection 2, the board shall pay to or on behalf of the worker the wages and benefits prescribed by subsection 2."

Carried.

Mr. Chairman: Subsection 3(7) reads:

"(7) Every employer who makes default in paying the wages and benefits prescribed by subsection (2) shall, in addition to any other penalty or liability, pay to the board a sum equal to the amount of such wages and benefits and payment of such amount may be enforced in the same manner as the payment of an assessment may be enforced."

Mr. Lupusella: Let us see how vigorous the enforcement process of an assessment is. How is it enforced?

Mr. Cain: I understand that, if necessary, we go to court to get our money. I am not sure of the whole process, but we do whatever is necessary to get that money.

Mr. Lupusella: I still do not understand the process. If you write letters to the employer and the employer refuses, is the last resource an appearance before the court? Is this a regular practice the board follows?

Mr. Cain: To my knowledge, the board always goes after the assessments to the limits of the law.

Mr. Chairman: The subsection carries.

Section 3 agreed to.

Mr. Chairman: Before moving on to the next section, there is one item that the legislative counsel had a concern about dealing with quickly because of the time involved.

Moving back to the definitions, subsection 1(5) deals with "industrial disease." It was suggested that this should perhaps read "occupational disease." Don, perhaps you would like to tell us about that.

Mr. Revell: We never resolved that issue this morning as to whether there was going to be an amendment. I have received no instructions on whether there shall be an amendment to change that.

Mr. Laughren: I thought I gave you one.

Mr. Revell: If that is the case, Mr. Laughren, we will do the best we can. There is a fair amount of drafting involved, and I would appreciate some specific instructions. In the absence of specific instructions, I will take that as no instructions.

Mr. Laughren: I was thinking about that occupational thing at lunch. I know it may sound to some members as though it is nitpicking to change "industrial" to "occupational." But part of what is bothering me is that some people in the work place do not associate some illnesses or problems with their job as much as I think they should. For example, there are things like stress, shift stress, problems in lighting and so on where "industrial" has a different connotation in a lot of people's minds than "occupational."

I know I am not being terribly precise, but I just think it is more appropriate to refer to it as "occupational" rather than

"industrial." Somebody here this morning said a great deal does not turn on changing this word, and it probably does not, but I think it is more appropriate that it specifically refer to "occupational."

Mr. Sweeney: If you want to move it, Floyd, I will second it.

Mr. Chairman: Yes. We will open that up, because you require a certain lead time.

Mr. Laughren: I will so move it then.

Mr. Sweeney: I will second it.

I assume, from what was said a few minutes ago, that it would apply to every other situation where the word appears in the act itself?

Mr. Revell: Yes.

Mr. Sweeney: In other words, if we change the definition, does it automatically follow that it changes in the other places? We do not have to make those changes, do we? Is that right or wrong?

2:45 p.m.

Mr. Revell: I think I would have to go to the committee again. First of all, "industrial disease" has to disappear as clause 1(1)(n) of the act. It has to be reinserted somewhere around subsection 1(6) or 1(7) as "occupational disease," just to put it into the right sequence alphabetically.

Mr. Mancini: Just take your time and do it right and there will be no problems.

Mr. Revell: In that case, if it is an instruction in that form, I can do the drafting and bring back the motion. Maybe that whole issue can be just stood down or there can be a vote on whether I should do the drafting.

Mr. Mancini: I think you should do the drafting.

Mr. Sweeney: It has been moved and seconded.

Mr. Gillies: Mr. Chairman, I appreciate the point of view that has been put forward by the members speaking in favour of this. However, the ministry is not inclined to accept this amendment. We feel there is sufficient explanation there.

In fact, the very problem Mr. Laughren spoke to is addressed in the following clause, 1(1)(o), where "industry" is defined. It is very clear there that we are not just talking about a manufacturing concern but that it involves every type of work place we normally associate with this act. We just do not think it is a real problem. Our inclination is to leave it as is.

Mr. Mancini: The real problem is that you are defining the wrong word, and I personally cannot understand how you could give a definition to "industry." Which clause is that?

Mr. Gillies: It is on page 2. Look at clause 1(1)(o).

Mr. Mancini: Got it. I do not know how you could logically give that explanation to the word "industry." You are absolutely defining the wrong word. You are defining the word "occupational," but you are refusing to put the word in. To me, it just does not make sense as to why you would want to do that.

Over the past couple of years, the board has stressed, during the estimates sessions we have had with the chairman of the Workers' Compensation Board, that it is considering occupational diseases as a real problem and they will be compensating people for occupational diseases. There is an occupational disease committee or board that has been established, and it is reporting to WCB as to how it should deal with these particular matters.

While all this is going on, we want to turn a blind eye to the word used to describe the problem. Everyone on a consistent basis now, at least over the last two or three years, says regularly, "Yes, this is indeed a problem and we have to recognize it."

As my colleague said earlier, if an employee who worked for Johns-Manville was unfortunate enough, after a lengthy period of work there, to have developed cancer, we know that is an occupational disease. There are other kinds of occupational diseases. The list could be very long, I am sure. Why we are refusing to acknowledge that here when we acknowledge it elsewhere just does not make any sense.

For anyone, particularly the lawyers who are advising us, to indicate that the word "industry" is described by the following two or three sentences and that is indeed the definition of "industry," I have to say you are not only stretching it, but you are not defining the word "industry" under any circumstances. No one, particularly a layperson, would accept that as the definition of "industry" under any circumstances.

Mr. Gillies: Mr. Chairman, I beg to differ. I know in recent times the word "industry" has come to be associated just with manufacturing, but in fact the Oxford dictionary--

Mr. Laughren: Which everybody carries.

Mr. Gillies: Right. I just happen to have one with me.

It defines "industry" as a "branch of trade or manufacture." It covers a very broad area. We are certainly not turning a blind eye to the word "occupation," because it is right there in subclause 1(1)(n)(i): "A disease resulting from exposure to a substance relating to a particular process, a trade or occupation in an industry."

I think we are largely splitting hairs. I do not see the great value in trading "industrial" for "occupational."

Mr. Kolyn: Mr. Chairman, we seem to have a difference of opinion on this particular subject.

Mr. Laughren: Are you disagreeing with (inaudible)?

Mr. Kolyn: If you do not stand the motion down, I will certainly call for a division to get the members in here for the vote.

Mr. Chairman: Under section 89(c) of the standing orders, a division has been called.

Mr. Mancini: That is what happens when you win 211 seats.

Mr. Kolyn: Are you not lucky you did not run federally?

Interjection: You were smart, Remo. You are the smartest man in the room right now.

Mr. Chairman: We have up to 20 minutes to get the members in.

The committee recessed at 3 p.m.

3:06 p.m.

Mr. Chairman: There is an amendment proposed by Mr. Laughren to change in clause 1(n) the phrase "industrial disease" to read "occupational disease."

Those in favour of that amendment, please so signify.

Those opposed?

The vote is five to five.

Mr. Mancini: Just a minute, can the member for Brantford (Mr. Gillies) substitute?

Mr. Chairman: Yes, he can.

I should have asked the clerk to read out the names of the committee members, but Mr. Gillies is substituting.

Clerk of the Committee: He is a member of the committee.

Mr. Riddell: As of when? Five minutes ago?

Mr. Chairman: As of first thing this morning.

Clerk of the Committee: As of June 27.

Mr. Mancini: Sounds pretty fishy to me.

Mr. Chairman: The vote is five to five. It looks like it is up to the chairman to break the tie.

Having heard the debate on both sides and understanding what

the problems are and how they relate to the effect it would have, I would have to vote against the amendment.

Motion negatived.

Mr. Chairman: While I have everyone's attention, the other part that was asked by legislative counsel to investigate was on page 3, sub-subclause 1(7)(xa)(ii)(B) which says: "in a relationship of some performance"--rather, "permanence."

Mr. Laughren: The word is appropriate in the circumstances, although that is not the word.

Mr. Revell: I am going to tell a little story here before I get down to dealing with the issue of a relationship of some permanence.

The members of the ministry are here and testify to the fact that in one draft of the bill--my handwriting is not the world's greatest handwriting, if anybody has ever seen it--my secretary in fact typed in "relationship of some performance."

It was quite clear to me that my handwriting said "permanence," but I could see where somebody could easily interpret it in some other way.

3:10 p.m.

Mr. Laughren: Is this a preamble to the Victorian morality that we are going to have laid on us now?

Mr. Revell: I was not intending to. The question that was asked of me this morning was how would the expression "of some permanence" in sub-subclause 1(1)(xa)(ii)(B) of the act which appears in subsection 1(7) of the bill. I did not have a great deal of time over the lunch hour, but I was successful in finding one case, which is the one that has been distributed to you by the clerk, "Re Labbe and McCullough." It is a decision of the provincial court, family division. It is reported on page 536 of the 23 Ontario Reports, second series.

To summarize this case, I think all the facts are set out on page 538. The judge found the following evidence. The couple had "cohabited for only six weeks out of a total period of 19 months...the apartment in Toronto and all its contents belonged exclusively" to the applicant Labbe. "The respondent at all times left all his possessions in his parents' home."

He did find some evidence in favour of there being a relationship of some permanence. "1. The parties knew each other's whereabouts at all times between January 1976 and August of 1977; 2. The applicant moved to Toronto in part to be with the respondent; 3. The respondent went to North Bay to be with the applicant while he recovered from his broken hand; 4. There was some talk of marriage some day."

On these facts, the judge found that there was a relationship of "some permanence," which is the same wording as is

used in our act. Of course, he was interpreting the Family Law Reform Act.

In my opinion, the courts would stretch "some permanence" to find a relationship, particularly where there is a child involved. I think that most of us might say that is pretty tenuous. Some talk of marriage some day may or may not reflect a permanent relationship at all, but the judge so found.

I cannot speak for how the board would interpret it, but I certainly think it should be looking at the precedents that are being established by the courts interpreting the same wording.

Mr. Laughren: Is there any relevance in the fact that he was performing in Kirkland Lake?

Mr. Havrot: Great community; cold nights.

Mr. Revell: I guess the one thing that is important here is who is cut out by the concept of in "some permanence"? Maybe this is the Victorian morality thing. To be colloquial, this would perhaps cut off the one-night stand or the one-weekend stand.

Mr. Laughren: Here it comes. I told you.

Mr. Revell: That is all I am going to say about it. I think that is the intention of the kind of relationship that would not be found to be a relationship of some permanence.

However, I point out that if there is a child of that type of relationship, subject I assume to whatever has to be done to prove paternity, that child is still a child of the worker and would presumably be entitled to whatever benefits result when there is a death of a worker. The child still benefits. It is the male or female who is involved in the one-night stand.

Mr. Laughren: Could I ask your opinion? This is not terribly relevant but it is interesting.

Mr. Kolyn: Just promise to marry her.

Mr. Laughren: If there had been no child here, and it was not a case of support payments but rather support for Darlene Labbe, would that also have been held to have been a relationship of some permanence, in your opinion?

Mr. Revell: I do not think she would have fared as well, partly because under the Family Law Reform Act there is another test. When there is no child, I believe the test is five years of cohabitation, so I think she would not have received anything in this situation.

Mr. Chairman: We have that information. Are you prepared to move on and leave section 1 open? Those are the two items we wanted clarified. The other one was the agricultural family, and we have not got anything back on that. We will move on.

I wonder if somebody else would like to comment. Mr.

Sweeney, would you like to carry on and read section 4 for us?

Mr. Sweeney: Sure.

On section 4:

Mr. Sweeney: "Section 5, subsections 6(8) and (9)(2), sections 20, 33, 52, 82 and 115 and subsections 121(1) and 122(11) of the said act are amended by striking out 'medical aid' wherever that expression occurs and inserting in lieu thereof in each instance 'health care.'"

Mr. Gillies: Mr. Chairman, this change was requested primarily by the chiropractors of the province. They were concerned that there was a very heavy medical orientation. I am sure some other members may have heard from the chiropractors that they would like to see the use of the words "health care." We had no particular objection to it.

Mr. Mancini: They have been sending in a lot of donations lately; I am not sure why.

Mr. Gillies: To you?

Section 4 agreed to.

On section 5:

Mr. Sweeney: "Subsection 8(1) of the said act is amended by inserting after 'employer' in the fourth line 'or an executive officer thereof.'"

Mr. Laughren: I think I need help on this one. When I look at the existing act--subsection 8(1) is very short; can I read it, Mr. Chairman?

Mr. Chairman: Please do.

Mr. Laughren: "Where an accident arising out of and in the course of his employment happens to an employee under such circumstances as entitle him or his dependants to an action against some person other than his employer"--what this amendment would add in there is "or an executive officer thereof"--"the employee or his dependants, if entitled to benefits under this part, may claim such benefits or may bring such action."

Is this the third-party section? Is that what this means? Is it like the Coke bottle incident? Do most people understand the Coke bottle reference, where a person was injured in a supermarket? Is it the same thing?

Mr. Sweeney: I thought this was the one about the woman slipping in the parking lot and she brought an action against one of the directors or something.

Mr. Gillies: That is the next one, John. That is subsection 9. This one is third-party. An example would be where somebody was working in the work place and another person, not the

employer, caused that person some injury that was completely unrelated to employment.

Mr. Laughren: If you are delivering beer to a hotel--no, that would not be it, would it?

Mr. Sweeney: Why are we putting in "or an executive officer thereof"? What has that got to do with it?

Mr. Cain: This section provides that the worker is entitled to take action against any person other than his employer. In the case you just mentioned, Mr. Sweeney, the worker took action, not against the employer as such but against an executive officer. The purpose of injecting "executive officer" in here is so that the injured worker cannot take action against him.

Mr. Laughren: If he is a third party.

Mr. Gillies: We are just clarifying that a third party is a third party and not an agent of the employer. We are extending the employer's protection, as it were, to his executive officers.

Mr. Kolyn: Is not an employer an executive officer under the law?

Mr. Chairman: Not in the case of a corporation. The corporation is the employer. The president, vice-president, secretary-treasurer and so forth are executive officers of that corporation.

Mr. Kolyn: But in law would not an employer be the company? It would stand to reason that all the executive officers are the employers.

Mr. Chairman: No. I do not think that is right. I think legal counsel will have to help me here.

3:20 p.m.

Mr. Sweeney: There was a case where they were actually successfully sued.

Mr. Laughren: Can you give us an example?

Mr. Cain: The example was the situation where a chap owned a car agency and someone who worked for him walked out the front door of the building and slipped on the steps because there was ice. Normally one would have thought the worker could not take action against the owner of the car market because this person was a worker and was on company premises leaving them. However, it came about that action was taken against the employer as an executive officer, and an award was provided. That is why the words "executive officer" are added here: to ensure that workers cannot sue the president, vice-president, etc., of the company by whom they are employed.

Mr. Sweeney: Who are technically not the employers.

Interjection: I remember the case.

Mr. Laughren: Oh. Well, I will vote against this section.

Mr. Chairman: Shall subsection 5(1) carry? Division? Those in favour of carrying subsection 5(1)? Opposed? I saw only three hands in opposition.

Interjection.

Mr. Chairman: Oh, I see.

Mr. J. M. Johnson: Can you not abstain?

Mr. Chairman: We have to vote for the majority.

Interjection: An abstention is a negative vote.

Mr. Chairman: Perhaps I can call again and we will just clarify this. Those in favour of--what have we got? There is an amendment on the floor. No. Those in favour of subsection 5(1)? Six. Those opposed? Four. The item carries.

Subsection 5(2), Mr. Sweeney?

Mr. Sweeney: "Subsection 8(9) of the said act is amended by inserting after 'schedule 1' in the fourth line 'or any executive officer.'"

Mr. Laughren: Excuse me. This one on page 9 is different. It deals directly with the employer as opposed to a third party, right? In that case I will have to vote against it.

Mr. Chairman: Those in favour of subsection 5(2)? Six. Those opposed? Four. The item carries.

Subsection 5(3)?

Mr. Sweeney: "Subsections 8(11) and (12) of the said act are repealed and the following substituted therefor:

"In any action brought by a worker of an employer in schedule 1 or dependant of such worker in any case within subsection (1) or maintained by the board under subsection (4) and one or more of the persons found to be at fault or negligent is the employer of the worker in schedule 1 or an executive officer thereof, or any other employer in schedule 1, or an executive officer thereof, or any worker of any employer in schedule 1, no damages, contribution or indemnity are recoverable for the portion of the loss or damage caused by the fault or negligence of such employer of the worker in schedule 1 or an executive officer thereof, or of any other employer in schedule 1 or executive officer thereof, or of any worker of any employer in schedule 1, and the portion of the loss or damage so caused by the fault or negligence of such employer of the worker in schedule 1 or an executive officer thereof, or of any other employer in schedule 1 or any executive officer thereof, or of the worker of any employer

in schedule 1, shall be determined although such employer or executive officer or worker is not a party to the action."

Mr. Gillies: Mr. Chairman, just for clarification, all that subsections 8(11) and (12) do is to add the phrase "and executive officer of," which we passed in section 5.

Mr. Sweeney: This is the third-party one.

Mr. Gillies: Yes. So everything is as it was in the existing act except the addition wherever necessary of the words "and executive officer of."

Mr. Sweeney: Mr. Chairman, I have a comment. One of the witnesses who appeared before us suggested we add the word "director" here. I am really scratching my memory to find out why, but it seemed to me that their argument was that perhaps a director of a company could be sued.

Mr. Gillies: Could be liable.

Mr. Sweeney: I have a little notation in my margin and that is all I can think of offhand.

Mr. Chairman: I have too. I have a similar notation.

Mr. Sweeney: I think one of the lawyers came in and said, "Do you realize that you are still leaving the director of a company open to suit?"

They cannot sue the corporation, they cannot sue the employer, and they cannot sue the executive officer. You have covered that. But it is possible that someone could bring suit against a director of the company. I think the argument simply was that if you are really trying to put in total no-fault, you would have to include that as well.

I am just going on memory and I really cannot say any more.

Mr. Gillies: I guess the question is whether or not a director of a company is considered part of the employer or not. I do not know.

Paul, do you have any thoughts on that?

Mr. Hess: I do not think so. I know the law keeps changing, but generally speaking a director is not considered to be part of the--that is the old Solomon case which goes back to the late 1800s. It was held that a director or an officer of a corporation was a different legal person from the corporation itself, and that has been the law for almost 100 years now.

Mr. Sweeney: So you do not have any concern about it then.

Mr. Hess: Not really, although people are always looking for ways to expand a liability--and so are the courts, for that matter, I must say. I would not like to bet on anything any more.

Mr. Laughren: I am certainly glad we retained you.

Mr. Sweeney: For what it is worth, I draw that to your attention.

Mr. Chairman: Now that we have inserted an executive officer, we have eliminated that person and he cannot be sued, and the corporation cannot be sued, I guess the question is, can a director be sued.

Mr. Riddell: It would seem to me that the executive officers are generally elected or appointed by the board of directors, are they not?

Mr. Chairman: Yes.

Mr. Riddell: So I fail to see why you would protect an executive officer and not another director. It does not make sense to me. You either do away with both of them or include all of them.

Mr. Hess: By some way of explanation and justification of why it is sought to be done here, I should point out in the case that Bob Cain mentioned about the ice and the successful action against the president of that company, if I am not mistaken--

Mr. Cain: I believe you are right.

Mr. Hess: --and he was also the sole owner of the company, that the court was at pains--I believe I am saying it correctly--to emphasize that he personally had knowledge of the danger of the ice there because he could see it from the window of his own office, if I remember the facts correctly, knew it was there and did nothing about it.

So, when you are talking about a director, it depends on the degree of his involvement in the operation of the company and knowing what is going on and what it is doing. It was felt that a director who is merely a director and is not carrying on the activities and business of the company, which would make him an executive officer, would really not be, even under that decision, under any liability.

Having said that, there could be cases where a director has put his nose into things, observed things and done things, which perhaps would render him liable, but it is really hard to think of where that might occur.

Mr. Gillies: Mr. Chairman, I think Mr. Sweeney's point is well taken. Perhaps we should get an opinion on this from the crown law officers before we pass that subsection.

Mr. Chairman: Right. It could well mean that we will go back and amend the last two items that we passed, too.

Mr. Gillies: Yes.

3:30 p.m.

Mr. Sweeney: It might be worth while--and I do not even know where to suggest you begin--if someone who has any way of cross-referencing the statements of the witnesses who came before us can see if he or she can find the argument that was given. I found it sufficiently persuasive at that time to make a notation of it, and I did not do that for every recommendation that came in, only the ones that I thought had some merit.

Mr. Chairman: I cannot recall who it was.

Mr. Sweeney: Obviously, you can probably judge from the kind of person who would make that sort of recommendation.

Mr. Gillies: We will certainly take a look at it, Mr. Chairman, and get back to the committee.

Mr. Chairman: Would you like to stand down the clause, then, until we get an opinion from the committee?

Mr. Sweeney: Well, if we are trying to be consistent in terms of the no-fault concept, I think we should.

Mr. Chairman: Okay. On subsection 8(12) of the act:

Mr. Sweeney: "In any action brought by a worker of an employer in schedule 2, or dependant of such worker in any case within subsection 1 or maintained by the employer of the worker under subsection 4 and one or more of the persons found to be at fault or negligent is the employer of the worker in schedule 2 or an executive officer thereof, no damages, contribution or indemnity are recoverable for the portion of the loss or damage caused by the fault or negligence of such employer or executive officer and the portion of the loss or damage so caused by the fault or negligence of such employer or executive officer shall be determined although such employer or executive officer is not a party to the action."

Mr. Chairman: I guess the same applies here. It should be stood down.

On section 6:

Mr. Sweeney: Section 6: "Section 14 of the said act is amended by inserting after 'worker' in the fourth line 'or any executive officer thereof.'" Same thing again, Mr. Chairman?

Mr. Laughren: This is the one that goes all the way back to 1915. Who says the Tories do not think backwards?

Mr. Chairman: All right, we will stand that one down.

On section 7:

Mr. Sweeney: Section 7: "Section 15 of the said act is repealed and the following substituted therefor:

"15. Any party to an action may apply to the appeals tribunal for adjudication and determination of the question of the plaintiff's right to compensation under this part, or as to whether the action is one of the right to bring which is taken away by this part, or whether the action is one in which the right to recover damages, contribution, or indemnity is limited by this part, and such adjudication and determination is final and conclusive."

Mr. Laughren: Can we have a layman's view of that?

Mr. Gillies: Mr. Chairman, to put it as succinctly as possible, I understand the purpose of this section is: first, to determine whether or not the worker may sue, and, indeed, whom he may sue; second, to determine whether or not the worker may only enjoy a limited right to recover damages under the previous two subsections 11 and 12; and, third, whether or not the claimant is entitled to Workers' Compensation Board benefits. It is really a very, very important clause.

Dr. Wolfson just pointed out that, under the current act, this determination is made by the board. Under the new act, it would be made by the tribunal.

Mr. Laughren: Well, would this be the appropriate place to talk about whether or not--for instance, where it says "adjudication and determination is final and conclusive." Does this mean that it can no longer be sent to the Ombudsman?

Mr. Cain: May I give an example of how this section was utilized?

There was a case in which a busload of workers was travelling on a company road into a company's operation. There was an accident and a number of the workers were injured. It was determined that each person on that bus was a worker under the Workers' Compensation Act because of the circumstances--that the bus operated by the employer basically only carried workers who were not charged for the service. In any event, they were classed as workers.

However, one of the workers injured felt that perhaps he or she could receive more, I suppose, by third-party action. Under section 15 of the act, they brought to the board the question of whether or not they were a worker. They held they were not a worker under the act and wanted to get a determination of the board.

In fact, what this section is doing is asking the board, and now the appeals tribunal, to determine whether or not at the moment of accident the person injured is a worker under the Workers' Compensation Act and that the accident arose out of the course of employment.

Mr. Laughren: It is not the decision of the board to award compensation.

Mr. Cain: No. This is simply to tell the person whether or not he can proceed with an action in the courts or whether that

action is taken away because the person is held to be a worker under the Workers' Compensation Act.

I may not have used quite the right words, but that is the idea.

Mr. Sweeney: If in a case like that the person had proceeded anyway to go to court, is there anything that prevents him from doing it? On this business of something being final and conclusive, a judge could rule he was not going to accept it or something like that, but can they actually be prevented from taking it to court?

Mr. Cain: There are some lawyers here who could explain it far better than I can.

Mr. Hess: This section has been upheld by the Supreme Court of Canada on many occasions in the past. It has been held that the board has full jurisdiction to determine the issue, which is sanction and trust to the board. If a person wants to proceed in court, willy-nilly the provisions of the Workers' Compensation Act, he can do so if he wants to throw away all those costs and expenses, but it would be a frightfully costly lesson.

Mr. Chairman: So the only thing that is really changing here is the appeal to the tribunal and not to the board.

Mr. Hess: Yes, and the last phrase, whether the action is one in which the right to recover damages, etc., is limited by this part. That insertion arises because of certain decisions of the court which inferred that the board must necessarily have that power. The Ombudsman in a case, in a report on some decision, suggested that should be incorporated in this act.

Mr. Laughren: Can I ask a question? Does this in any way deal with the appeal to the Ombudsman? Right now, when it has been through the appeal system, workers can go to the Ombudsman for an opinion, which then goes to the committee and all that sort of stuff. Is this affected by this at all?

Mr. Cain: No. As far as we know, that is still the case.

Mr. Chairman: This is dealing with the court procedure, the courts only, as I understand it.

Mr. Laughren: It does not have anything to do with the situation where--I have had a couple of cases where policemen got hurt on the job and they recovered damages. The board sued. They recovered damages from a third party through the courts, which the board then pays to the worker, after subtracting the astronomical legal costs, and then gives the worker some money, but then all future benefits paid by the worker are deducted on paper and the worker gets nothing. That award has then been nothing. Would this not affect it because it is the board that is suing? That is why I am getting confused.

The worker does not sue the other side or company; the board does.

Mr. Cain: The worker has the choice. When the person injured is a worker under the act and the third party is not under, say, schedule 1 of the Workers' Compensation Act, then the worker makes a choice. Do they want to sue the third party or would they prefer to subrogate their right and claim compensation? Then the board sues the third party and what you described goes on from there.

Mr. Laughren: That is not definite, is it?

Mr. Hess: No, it is written in the act.

Mr. Laughren: You do not deal with it in this?

Mr. Hess: No, not in this act.

Mr. Laughren: There are some changes to be made there, but I guess we cannot get at it through this act.

10:40 a.m.

Mr. Lupusella: In the case of a car accident in which the worker gives a mandate to the board to sue the third party, why is the injured worker never notified about the total amount of the money given to the board by the third party's insurance?

Mr. Cain: I am not aware that they are not. I do not know the answer. I do not know whether the injured worker is notified of the total award.

Mr. Lupusella: Now they are not. I can tell you that.

Mr. Laughren: Some are, Tony. I am not saying the ones you have had, but both the ones I had were given a breakdown of the size of the award, the medical expenses that were deducted and the legal expenses that were deducted. I am not saying that is true of them all.

Mr. Lupusella: It is not generally applied, based on my own experience.

In relation to section 15, I would vote against it for one simple reason. In a case in which a worker is not defined as a worker under the definition of this act, why should the board have the determination to decide as to whether he should be entitled to get compensation? Why is it not left to the court?

In other words, you apply to the board for compensation at which time the board decides whether you should be compensated. But in a case in which the worker is not defined as a worker under the terms of this act, why do we not leave it to the courts to decide? Why should the adjudication of the board be final and conclusive?

Mr. Laughren: They could be ruling in their own interests.

Mr. Lupusella: Right.

Mr. Sweeney: But it is not the board any more; it is the appeals tribunal. That is the change.

Mr. Lupusella: I understand--

Mr. Gillies: At least an appeal goes to the tribunal, which is somewhat more independent than a decision made by the board.

Mr. Lupusella: Well, we will see if there is such independence in the future. But you proceed with the action before the board as to whether or not you are entitled to compensation. If the worker decides he is not covered under the act, why should we not leave to the court the decision that should be final and conclusive?

Mr. Cain: May I just make a practical observation. Section 75 of the current act gives the board exclusive jurisdiction in these matters. It is interesting, though, Mr. Lupusella. If one took away section 15 so it would be the responsibility of the courts to decide who was or was not a worker, then I would assume we could find employers--I guess we could anyway--going to the courts and saying, "At the time of this accident I do not think this person was a worker." Perhaps we would have it on both sides.

I do not know if that is so, but I could imagine that kind of thing happening. It would not just be the injured worker going to court; it would also be the employer, and you might find some real problems.

Mr. Laughren: Let us say for argument's sake that the board ruled that a person was not a worker. I cannot think of an example, but they would say you were not a worker in this case. What they are really saying to the person then is, "If you want satisfaction, go to the courts," or, "You are a worker; you will deal with us."

Mr. Cain: That is right.

Mr. Laughren: If that worker has no money with which to proceed to the courts, what they are really saying is that he is out in the cold. Would that decision then be allowed to go to the Ombudsman?

Mr. Cain: I honestly do not know if a decision of this section goes to the Ombudsman now, but if it does, this has not changed it at all. Whatever exists today continues. We have only transferred this authority to the appeal tribunal from the board itself.

Mr. Laughren: The appeal tribunal would rule whether this person is or is not a worker?

Mr. Cain: Ran up section 15 here and was brought to them by someone.

Mr. Laughren: Okay. So presumably the worker would have appealed that he was a worker or was not.

Mr. Cain: That is right, and they do both sometimes.

Mr. Laughren: Presumably that decision then, because of the appeal system, could be sent to the Ombudsman.

Mr. Cain: I would assume so.

Mr. Hess: They always have. They have never turned it down to this point. This does not alter that in any way.

Mr. Kolyn: I was just going to ask what "final and conclusive" means in this section, but he says it can go to the Ombudsman. That is really what I wanted to know.

Mr. Chairman: If there is no further discussion, shall section 15 carry? Carried.

Section 7 agreed to.

On section 8:

Mr. Sweeney: "Sections 21 and 22 of the said act are repealed."

Mr. Laughren: Is this to do with being subject to a medical examination?

Mr. Sweeney: Yes.

Mr. Laughren: Is this being repealed in place of the--

Mr. Gillies: Yes.

Mr. Sweeney: The employer's doctor, I think. Yes. Page 15 of the act.

Mr. Chairman: I know this was strongly opposed by two or three groups, including the Canadian Manufacturers' Association and the Employers' Council on Workers' Compensation.

Mr. Gillies: The employers' council opposed it?

Mr. Chairman: Yes. It is strongly opposed to the repealing of this. Has any reconsideration been given, Mr. Gillies?

Mr. Gillies: No, Mr. Chairman. Just to refresh members' memories, the reason for the repealing of these sections is that medical opinions can now be sought from the medical tribunal. We will have impartial medical assessors selected from the appeals tribunal. In our opinion, it would be superfluous to retain a provision creating medical referees under the board's authority when we are going to have these independent medical assessors.

We can appreciate the point of view put forth by the employers, but we feel there will still be full and proper assessments of medical problems. Under this section it will be somewhat more fair and impartial.

Mr. Chairman: So either side can go to the medical tribunal for appeal?

Mr. Gillies: Yes, because there is going to be a separate right of the employer to compel the worker to attend a physician of his choice.

Mr. Chairman: I do not think the employers got that answer at the time.

Mr. Sweeney: An explanation was not given.

Mr. Gillies: Perhaps not. As I say, I think it is going to be very fair and I think any qualms the employers' council has will go away when it sees how it operates. It is still going to be very tightly controlled and fair to everybody.

Mr. Laughren: Could I ask a question that is not directly relevant but very interesting? Earlier in the hearings, was there not some kind of agreement or discussion about the doctors wanting to make an appearance before the committee?

Mr. Chairman: Yes. I am sorry, I should have mentioned that at the very beginning of the proceedings today. Once we finish this item, we will get back to that. Thank you for reminding me.

Section 8 agreed to.

Mr. Chairman: Now, about the doctors: We are expecting responses from doctors to information that was sent out by our regular clerk, Mr. Arnott. He is expecting answers back from the doctors today or tomorrow. These will be circulated to all members as soon as they arrive.

After reviewing comments from the various specialty sectors of the medical association, if we as a committee want the medical association to appear before us, we can request it to do so and it will be prepared to do so next week.

Mr. Laughren: Where is Mr. Arnott?

Mr. Chairman: It is easier for the committee to deal with.

Mr. Laughren: Bring in the heavyweights.

Mr. Chairman: Some of the heavies are here now.

On section 9:

Mr. Sweeney: "Section 36 of the said Act, as amended by the Statutes of Ontario, 1984, chapter ---, sections 1 and 2, is repealed and the following substituted therefor:

"36(1) Where death results from an injury to a worker, a spouse who survives the worker shall be entitled to,

"(a) compensation payable by way of a lump sum of \$40,000 increased by the addition of \$1,000 for each year of age of the spouse under 40 years at the time of the worker's death or reduced by the subtraction of \$1,000 for each year of age of the spouse over 40 years at the time of the worker's death, but in no case shall a spouse receive a lump sum payment of more than \$60,000 or less than \$20,000;

"(b) compensation by way of periodic payments in the manner and to the extent provided in this section; and

"(c) the same counselling and vocational assistance as would be provided to a worker under section 54."

3:50 p.m.

Mr. Laughren: Can I interrupt for one second? Mr. Chairman, do you want to go through this whole section, which goes for a couple of pages? I have an amendment that is fairly substantial and I did not know whether you wanted to go into it. It does not matter to me which way you do it.

Mr. Chairman: I think we had better do them one at a time and deal with amendments as we go. Is that agreeable to the committee, because it is quite a lengthy section and to go back--

Mr. Sweeney: Can I ask another question?

Mr. Chairman: Yes.

Mr. Sweeney: Somewhere along in here I want to bring up the question of retroactivity of this clause, and I am not sure where the proper place would be to put it, not having read through the whole thing again. Can anyone suggest--

Mr. Revell: How do you mean about the retroactivity?

Mr. Sweeney: As I understand the legislation, those spouses who are affected by this legislation will be affected at the time of the passage of the legislation. There are other spouses who, immediately preceding the passage of this legislation, would be in a very similar situation but who would not be affected by it if there was not some kind of a retroactivity feature to it. That is the issue.

Mr. Laughren: That is related to my amendment.

Mr. Revell: Issues to do with that are in fact in part III of the bill. It would be the new part III of the act, which is sections 132 to--

Mr. Sweeney: What page are you on, please?

Mr. Revell: In the bill it would be pages 30 to 32.

Mr. Sweeney: Basically that says the same thing, does it not? Any accident that occurred prior to this bill being passed or this bill coming into force would be treated under the legislation that existed at that time. Is that not what it says?

Mr. Revell: That is exactly right. You asked me the question, not what the bill says but where do we deal with transition. You wanted to deal with transition.

Mr. Sweeney: I see what you are saying. All right.

Mr. Revell: It is a part of the bill that does in fact deal with transition. As to whether it reflects the policy that you want in the bill is--

Mr. Sweeney: The point I want to make though is if I want to introduce an amendment that deals with that particular issue, I was going to ask where under section 9 of the bill is it appropriate to do so, but are you now telling me that it might be more appropriate to do it under section 132?

Mr. Revell: I think that would be the appropriate place, Mr. Sweeney.

Mr. Chairman: The amendment we have from Mr. Laughren does deal with retroactivity.

Mr. Sweeney: Is that the question?

Mr. Chairman: I guess really the thing to do is deal with this amendment and see whether it is appropriate to leave it in this particular spot.

Mr. Laughren: Should I proceed?

Mr. Chairman: Yes, you may proceed, please.

Mr. Laughren: Do you want me to read the amendment and then speak to it?

Mr. Chairman: Mr. Laughren moves, seconded by Mr. Lupusella, that section 9 of the bill be amended by deleting the existing wording and replacing it with the following:

"36(1) Where death results from an injury to a worker, a spouse who survives the worker shall be entitled to,

"(a) compensation payable by way of a lump sum of \$40,000 increased by the addition of \$1,000 for each year of age of the spouse under 40 years at the time of the worker's death, but in no case shall a spouse receive a lump sum payment of more than \$60,000."

Clauses (b) and (c) remain as is.

"(d) This section shall provide retroactive entitlement to all existing spouses who survive workers who died as a result of a work related injury."

That is tying in the retroactivity.

It is further moved that subsection 3 be amended by deleting, starting in the sixth line, the words "or by the

subtraction of one per cent of the net average earnings for each year of age of the spouse under 40 years at the time of the worker's death," and in the 10th line, deleting the words, "more than 60 per cent or," and deleting the number "20" and substituting therefor the number "40."

Finally, it is moved that subsection 13 of the bill be deleted. That has to do with Canada pensions.

We are dealing right now really with subsection 36(1), clauses (a), (b), (c) and (d) on your paper. That is all we are going to deal with right now, if that is okay with you.

Mr. Laughren: Yes.

Mr. Chairman: We will go on to the other ones at the appropriate time.

Mr. Laughren: I agree. Speaking to the motion--

Mr. Chairman: And in favour of the amendment, no doubt.

Mr. Laughren: Yes. We feel it is not appropriate to start deducting \$1,000 for people over 40, recognizing that this is not a large sum of money to help people at a time when they have lost their spouses.

We think it is a bit strange to try to do that when circumstances can be so totally different for people at different ages of their lives. Most of us know people who have children in the university system, or in their teen-age years, when they are 50, 55, 60. These can be very high cost times. To reduce that award so arbitrarily simply is not fair.

I feel strongly about the retroactive part. It is a very difficult thing to establish fair retroactivity without the costs becoming totally horrendous.

It is certainly debatable the way it is worded here. However, to those people who were affected before this bill had come in, and before these, in some cases, improved benefits--at least the cash settlement, not the pension, is an improvement--it goes some way towards saying, "We do not like this two-class system of surviving dependants and spouses." That is why the retroactivity section is put in.

I am sure the board would like to get out the calculators to tell us how much this would cost. They are obviously going to need to know that. I suspect that the committee would want to know that, too.

I do not know what it would cost. I do not know how many of those people there are. If you are going to bring some justice to these people, it is going to cost. I think that it is not an unreasonable demand for us to be making of the compensation board. You can make the request.

Mr. Cain: If you are referring to existing claims, Mr. Laughren, we provided the cost of providing existing claims with new benefits, which we got from actuarial services, this morning.

Mr. Laughren: Yes, but it is not quite the same as the existing claims with the new benefits. It is an arbitrary number that I have slotted in there, the \$30,000 cash settlement.

Mr. Cain: I see, under the situation you have described.

Mr. Laughren: Yes.

Mr. Sweeney: I want to make two observations. The first one is that the existing legislation with respect to the age 40, and then the under and over, is substantially similar to our dissenting recommendation in the committee's report. Consequently I would not be able to support the present motion.

However, I have made it very clear that I do want the retroactive section in some place. Whether it is put in here or in section 132, as has been suggested, is not material as far as I am concerned, as long as it is in some place.

Mr. Chairman: Mr. Gillies had some comment on the cost.

Mr. Gillies: In answer to Mr. Laughren's question about cost, I have something here that I can read very briefly to the members. It might give them an idea of what we are talking about in terms of the whole system.

4 p.m.

You will excuse me if I read this. I am just looking at it now.

The committee requested that the board estimate the cost of applying the survivor benefits of Bill 101 to existing schedule 1 claimants. In order to provide a ballpark estimate by the beginning of September, we have made a number of simplifying assumptions which are listed in the appendix to what I am giving you now.

Based on those assumptions, which I can lay out for you if you like, the total capitalized value of survivor benefits under Bill 101 for the existing claimants at the beginning of 1984 is \$765 million, which consists of \$162 million for lump sum benefits and \$603 million for pensions.

These figures are derived by using a two per cent discount rate to allow for future inflation and on the assumption that all claimants receive the benefits specified by Bill 101. If claimants have the option to receive the higher of their current pension benefit or the benefit specified under Bill 101, then the total cost will be higher still.

For comparison, the present liability at the end of 1983 for the same claimants was \$305 million, assuming a seven per cent discount rate. This liability increases to \$490 million when using a two per cent discount rate to allow for future inflation. If we were to bring in all of the claimants, the real difference is between \$765 million and \$490 million, a difference of \$275 million.

Then it talks about mortality rates, values, inflation and so on. I could distribute this to members, if they would like. It has been distributed. I guess you have it.

Mr. Laughren: I suspect our amendment would not be acceptable in its existing form. I would ask the members of the committee to consider at least accepting part of it, doing one of two things in terms of the retroactivity. One is either a lump sum, which if we use the figures Mr. Gillies just gave us, I think was \$165 million.

Mr. Gillies: It was \$162 million.

Mr. Laughren: That is not quite equivalent because I have levelled it off to a flat rate of \$40,000 because of the age differences; someone could have been killed 10 years ago and someone else 20 years ago, therefore you could not make a direct equivalent to the numbers.

However, I would ask that one of two things be accepted by the committee: one, a lump sum payment to existing dependants whose spouses were killed before this act came into place; or, two, an improvement in the pensions for those people. I ask for one of two things, if you cannot accept the package, so we are at least saying to those people, "We recognize you."

I think there is an agreement by almost everybody in the province--even a lot of the employers, I might add--that dependants have not been treated very well over the years with a very small pension and really nothing in the way of cash except burial expenses and forth. Most employers were quite sympathetic to improving that part of the bill, as I recall. Therefore, we should recognize those people in one way or another--either through improved pensions or the cash settlement.

The cash settlement lump sum payment is simple because it does not get you into age differences, numbers of dependants and all those things which would be probably difficult to administer. I am not sure. It is a very clean way in which to deal with the problem once and once only. While it does not give complete justice, it still ends up with two classes of dependants and it at least introduces an element of justice for existing dependants whose spouses were killed. There should be some recognition of that by the committee.

I understand that this would have to be some kind of compromise arrangement to get at the way the committee could accept it. I understand that. This amendment is put out there to debate, to change and so forth.

Mr. Sweeney: Mr. Chairman, I support much of what Mr. Laughren has just said, and for the reasons he has given. I would add that the one group that has almost no bargaining power to improve its position is the spouses and dependants. Existing injured workers have the continued potential, at least, of coming back to the government, dealing with it and getting changes in pensions, in compensation and supplements and in the whole question of the wage-loss principle. In other words, if they do

not get everything they hope to receive in this legislation, it is not over and done with; they can come back. But the spouses and dependants have much less leverage, and I really want to see something dealing with this retroactive clause here; otherwise I just do not think they are going to get it. That is the first point I want to make.

The second point is that it has been brought to my attention, and I would like some clarification, that the question of retroactivity could be put in either here or in that later section--I think it was section 132. However, if it is put in here and it does not pass because it is complicated by other factors in this particular amendment, then perhaps we would not have the committee right or the legislative right or some right to reintroduce the same principle again.

Can I have that confirmed? It has been suggested that this might be the case and, if it is, I have to turn to my colleague and say, "We had better be careful of what we are doing."

Mr. Revell: I have been speaking to Mr. Sweeney, Mr. Chairman. It is my understanding of parliamentary procedure--and it is subject, of course, to clarification by you and the clerk; it is not a legal matter, it is a procedural matter--that if a motion is moved and that motion is defeated, then, except with the unanimous consent of the committee, a motion dealing with the same principle is out of order for the rest of the committee hearings; it just cannot be reintroduced in these particular proceedings.

I discussed this with Mr. Sweeney because he advised me of his concern about wanting to deal with the same issue as Mr. Laughren. I had already advised him that perhaps we should look at it in section 132, and I did not want Mr. Sweeney to be taken by surprise when we got to section 132 and somebody said: "We have already dealt with retroactivity in section 36, Mr. Chairman. Let us move on."

Mr. Sweeney: I very much appreciate the caution and I think we should be cognizant of it. That is all.

Mr. Chairman: That is true. Once it has been dealt with it cannot come before the committee without unanimous consent. Because you are already cautioning us on your concern, Mr. Sweeney, perhaps I could ask unanimous consent right now to have it reintroduced at a different point for different purposes of discussion under section 132 or wherever it is felt appropriate for this one particular item. Can I have unanimous consent from the committee?

Mr. Laughren: Have you got another whole amendment?

Mr. Sweeney: No, just the retroactivity.

Mr. Chairman: No, just the retroactivity.

Mr. Sweeney: We want to be sure that if it gets lost here, we can introduce it again. We do not want a procedural

wrangle saying we have already dealt with it and therefore we cannot introduce it again. That is my concern.

I hope that in fact we can get it, because it does make a difference in how we proceed with this section.

Mr. Chairman: Is there any dissenting voice on my suggestion that we have unanimous consent? I hear none.

Agreed to.

Mr. Sweeney: No objection.

Mr. Chairman: No objection if you bring it up again if it is not appropriate here.

Having dealt with that, we are now at a point of further discussion on the amendment that has been proposed by Mr. Laughren.

Mr. Laughren: We are basically talking about whether or not there should be a reduction of \$1,000 a year from \$40,000 to \$20,000. That is basically the heart of clause 36(1)(a), and it removes that part of the section. Do you follow me?

Mr. Chairman: Yes, I do. We are dealing strictly with an amendment to clause 36(1)(a). Is there any further discussion on that?

4:10 p.m.

Mr. Lupusella: Before we proceed with the vote, I would like to make a few remarks.

If there is an issue that really touches the emotional aspect of compensation, it is in regard to survivors' spouses because we are dealing with fatal cases. In our society I think the attitude of the government in the past was to treat other survivors differently. For example, if you consider the spouse of a policeman who has died in the line of duty, there is a different method of compensation.

Recently we heard that the Canadian Association of Chiefs of Police was calling for capital punishment when a policeman is killed in the line of his or her duty. I want to be frank and sincere on that issue. I do not really see any specific difference between a policeman who dies in the line of his or her duty and a worker who is killed when performing a specific assignment on behalf of an employer.

This issue has been raised so many times in the Legislature that I was expecting this morning that the government would tackle the issue of retroactivity for survivors' spouses of past accidents, which at the present time will not be covered by Bill 101. I was a little surprised because the issue was raised several times on the floor of the Legislature.

The parliamentary assistant raised the issue of the money involved. If there is a clause to which I am going to close my

eyes in regard to the total amount of money that will be spent, it is that particular clause. The life of a human being cannot be clearly determined by the total amount of money that will be assigned. I think the remuneration given to the survivor's spouse is just one aspect of the total tragedy families are faced with when the breadwinner disappears.

I am talking about emotions with that issue because in my riding I see survivors' spouses suffering from nervous breakdowns from the time the breadwinner disappears as a result of a fatal accident. They never remarry, they dress in black and they never leave their homes. I have many people in that situation. Trying to penalize survivors' spouses is something I really resent, especially at a time when we are trying to reform the Workers' Compensation Board and when the government is well aware of this type of tragedy.

I do not want to echo what my colleague has just expressed. I do not think we are in a situation where we have to penalize survivors' spouses. We have to be really generous. The total amount of money that will be spent for them is very well spent. Even if we have to reach a figure of \$1 billion, it does not make any difference. I hope that as a committee and as a Legislature we are going to have a feeling of compassion that we are dealing with human tragedies and we should be really generous in granting the amount of money which my colleague has expressed in the course of this amendment.

Mr. Chairman: Any further discussion? Actually, we have to deal with the total of clauses 36(1)(a), (b), (c) and (d) in the wording of the amendments. So we can discuss any of the points right now within our discussion. We have to deal with them all in one package.

Mr. Laughren: Clauses (a), (b), (c) and (d).

Mr. Chairman: Clauses (a), (b), (c) and (d), yes. Nothing below that, not the bottom two paragraphs.

Mr. Revell: As a drafting matter, Mr. Chairman, I would think it might be better if clause (d) be separated--

Interjection: Clause what?

Mr. Revell: It might be better if clause (d) in Mr. Laughren's amendment be separated out as a new subsection 1(a) and in that way you could vote on clauses (a), (b) and (c). I assume "as is" really means the wording that we already have in the bill. That would get the amendment carried by making this slight change.

Mr. Chairman: That is fine. We will take clause (d), the one about retroactivity, out of there then. Is there any further discussion on clause (a)?

Mr. Laughren: They must be supporting it; they are not objecting.

Mr. Chairman: All right. Those in favour of the amended

clause (a)? Clauses (b) and (c) remain the same. Those in favour of amended clause (a) as proposed by Mr. Laughren. Two. Those opposed? Seven. That is defeated.

I do not think we have to deal with clauses (b) and (c). Shall clauses (a), (b) and (c) carry, as proposed by the bill?

Interjection.

Mr. Chairman: No, I did not say that.

Mr. Laughren: As printed on here.

Mr. Chairman: It is printed.

Clauses (a), (b) and (c) carried.

All right, section 36(1)(a), which is the retroactive one.

Mr. Revell: Excuse me, Mr. Chairman. Now that I have got one thing, I am going to try and stretch my luck here. I would like to suggest that if it not be stood down for any longer period of time, that this particular clause be stood down at least until we have completely considered the other clauses to section 36. Whether it appears as subsection 1(a) or as section 16 is indifferent at law. I would like to have the opportunity to discuss Mr. Laughren's proposed amendment with him so that perhaps we could come up with slightly different wording, which would effectively carry out his intention, if that is agreeable to Mr. Laughren.

Mr. Laughren: Sure.

Mr. Chairman: The amendment to section 36(1)(a), or whatever it is going to be numbered, is set aside for future consideration.

Mr. Chairman: Subsection 36(2), Mr. Sweeney.

Mr. Sweeney: "Where a deceased worker is survived by a spouse and one or more children, compensation in an amount equal to 90 per cent of the deceased worker's net average earnings at the time of injury shall be payable to the spouse until the youngest child reaches the age of 19."

Mr. Chairman: Discussion.

Interjection: Carried.

Mr. Chairman: Carried? Agreed?

Subsection 36(2) is carried.

Mr. Sweeney: Subsection 36(3): "Where the deceased worker is survived by a spouse and no child or children, the spouse shall be entitled to a periodic payment of 40 per cent of the net average earnings of the deceased worker adjusted by the addition of one per cent of the net average earnings for each year

of age of the spouse over 40 years at the time of the worker's death or by the subtraction of one per cent of the net average earnings for each year of age of the spouse under 40 years at the time of the worker's death, but in no case shall the spouse receive a periodic payment of more than 60 per cent or less than 20 per cent of net average earnings of the deceased worker."

5:20 p.m.

Mr. Chairman: Mr. Laughren moves that subsection 3 by amended by deleting the words "or by the subtraction of one per cent of the net average earnings for each year of age of the spouse under 40 years at the time of the worker's death," and in the 10th line deleting the words "more than 60 per cent or" and deleting the words "20 per cent" and substituting therefor the words "40 per cent."

Mr. Laughren: Once again, the first deletion is to get rid of penalizing people under the age of 40 to the tune of \$1,000 a year. The second deletion would have the effect of saying that there would not be that ceiling of 60 per cent and it would not drop to less than 40 per cent of the net average earning of the deceased worker, rather than the way it reads now, to 20 per cent.

Mr. Chairman: Is that understood? Is there any discussion on that amendment?

Mr. Sweeney: What made you choose 40 per cent?

Mr. Laughren: I picked 40 per cent because I felt it was fairer, that is all. There is no magic formula.

Mr. Chairman: Is there any discussion? If not, shall the amendment carry?

Motion negatived.

Mr. Chairman: Subsection 36(3), as printed, is agreed to.

Mr. Sweeney: Subsection 36(4): "Where there is no spouse entitled to compensation or the spouse dies and the deceased worker,

"(a) is survived by only one dependent child, the dependent child is entitled to compensation equal to 30 per cent of the net average earnings of the deceased worker at the time of injury; or

"(b) is survived by more than one dependent child, the dependent children are entitled as a class to compensation equal to 30 per cent of the net average earnings of the deceased worker at the time of the injury, plus an additional amount of 10 per cent of the net average earnings of the deceased worker at the time of injury for each additional dependent child over one to a maximum of 90 per cent of the net average earnings."

Mr. Laughren: That is so it will apply to John Sweeney.

Mr. Sweeney: Not any more. Most of them are over 19.

Mr. Chairman: They are no longer dependent. John is beginning to be dependent on them.

Mr. Sweeney: It does not work that way.

Mr. Chairman: I know it does not. I have three.

Mr. Laughren: Sorry, John.

Mr. Chairman: Is there any discussion on that? Shall it carry?

Mr. Lupusella: No, I disagree with that, Mr. Chairman.

Mr. Chairman: What do you propose it should say?

Mr. Lupusella: Ten per cent of the net average earnings of the deceased worker at the time of injury for each additional dependent child. Again, we are discriminating. We are creating different classes of dependents here and it is bothering me. We do not have a heart on emotional issues when we are dealing with fatal cases. It appears that the Tory members, and even the Liberals, do not have a heart.

We have a heart when policemen die. Let us pull out the policies governing the surviving spouses and dependents of police officers and find out the difference. Why 10 per cent? Who drafted the bill? Maybe the government can give me an explanation. Why 30 per cent and 10 per cent? Is this a fair and just society? We had better call Mr. Trudeau.

Mr. Chairman: All right. Are you speaking against the motion?

Mr. Lupusella: I will vote against it.

Mr. Laughren: Mr. Chairman, maybe I am confused here. If you have a dependent with one child, a spouse with one child, that spouse, depending on the age of the spouse, would get a certain pension and then would get 10 per cent of net average earnings for each child. Am I right?

What is bothering me here is the level of pensions. The way it is worded, it is almost impossible to visualize a pension.

Hon. Mr. Ramsay: You missed one sentence there.

Mr. Laughren: Where?

Hon. Mr. Ramsay: Where there is no spouse entitled to compensation or the spouse dies.

Mr. Sweeney: Subsection (2) deals with the spouse and the children. Subsection (4) deals with the children and no spouse.

Mr. Laughren: Right, sorry. But to go back to Mr. Lupusella's question-- Oh, this is without a spouse.

Mr. Chairman: What we are dealing with right now, yes.

Mr. Sweeney: Dealing with the children only.

Mr. Laughren: Let me just put this in the way that I can picture it. We have, let us say for argument's sake, a man who gets killed, the wife has already died for whatever reason, and there may be three children. There would be one \$40,000-lump sum and not three times \$40,000. Then there would be 10 per cent awarded in the form of a pension of the average earnings of the person who was killed on the job. Am I reading this wrong?

Mr. Sweeney: If there is more than one child, the first child does not get 30 per cent and the next one 10 per cent. They then become a class and the total class of children gets 30 per cent, plus 10 per cent, plus 10 per cent, plus 10 per cent, whatever the number of children.

Mr. Laughren: So if there were two children, they would get 50 per cent.

Mr. Sweeney: As a group of children, they would get 50 per cent.

Mr. Laughren: Presumably, they would be looked after by the state or family or someone.

Mr. Cain: Excuse me. If you look at subsection (11), and in most cases this is what occurs, if there are no surviving parents, frequently someone stands in loco parentis. Then they are entitled to 90 per cent while they are looking after those children as though they were the parents. That is normally what occurs. You rarely ever have children who are not being looked after by someone.

Mr. Chairman: All right. Can we vote on this item? Those in favour of subsection 4? Opposed?

Subsection 4 is agreed to.

It is just about 4:30 and time for adjournment till 10 o'clock tomorrow morning. We will be sitting morning and afternoon tomorrow. I believe that was the agreement.

The committee adjourned at 4:28 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

FRIDAY, SEPTEMBER 7, 1984

Morning sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)

VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Gillies, P. A. (Brantford PC)

Havrot, E. M. (Timiskaming PC)

Johnson, J. M. (Wellington-Dufferin-Peel PC)

Kennedy, R. D. (Mississauga South PC)

Laughren, F. (Nickel Belt NDP)

Lupusella, A. (Dovercourt NDP)

Mancini, R. (Essex South L)

Riddell, J. K. (Huron-Middlesex L)

Sweeney, J. (Kitchener-Wilmot L)

Yakabuski, P. J. (Renfrew South PC)

Substitutions:

Hennessy, M. (Fort William PC) for Mr. Kennedy

Kolyn, A. (Lakeshore PC) for Mr. Villeneuve

MacQuarrie, R. W. (Carleton East PC) for Mr. Yakabuski

Also taking part:

Gillies, P. A. (Brantford PC), Parliamentary Assistant to the
Minister of Labour

Clerk pro tem: Carrozza, F.

Staff: Revell, D., Legislative Counsel

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation
Board

Wolfson, Dr. A. D., Assistant Deputy Minister, Program Analysis
and Implementation

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Friday, September 7, 1984

The committee met at 10:05 a.m. in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT
(continued)

Resuming the adjourned consideration of Bill 101, An Act to amend the Workers' Compensation Act.

Mr. Chairman: We will call the meeting to order. When we finished yesterday, we were waiting to begin subsection 36(5) of the act, which is in section 9 of the bill. I wonder, Mr. Lupusella, if you would like to begin the scriptures for the day.

Mr. Lupusella: I have a motion on section 36.

I move, seconded by Mr. Laughren, that section 36 of the act as set out in section 9 of the bill be amended by adding thereto the following subsections:

"(17) Where death results from an injury to a worker and the deceased worker is not survived by a person who is entitled to receive a payment under any other provision of this section but the worker's mother and father, or either of them, survive the worker, or the only persons entitled to a payment under subsection 6, are the worker's mother and father, or either of them, they shall be entitled to receive in aggregate a total lump sum payment of \$40,000."

Mr. Chairman: Excuse me. I wonder if we could deal with the subsections up to that, and then with these amendments. My request was that you begin the readings this morning at subsection 36(5). When we complete subsection 36(15), we will get into these amendments.

Mr. Lupusella: Okay.

Mr. Chairman: If you would like to read them, we will deal with them one by one, beginning with subsection 36(5).

Mr. Lupusella: From the bill?

Mr. Chairman: From the bill, yes, as Mr. Sweeney was doing yesterday. Page 8.

Mr. Lupusella: Subsection 36(5): "(5) Where, at the time of the death of the worker, there is no spouse entitled to receive a lump sum payment under clause (1)(a), the worker's dependent child or children shall be entitled to receive in aggregate a total lump sum payment of \$40,000 in addition to the compensation payable under subsection 4."

Mr. Chairman: Any discussion on that point? Shall subsection 36(5) carry?

Agreed to.

Mr. Lupusella: Subsection 36(6): "(6) Where a deceased worker is not survived by a spouse, a child or children and there are dependants, the dependants are entitled to reasonable compensation proportionate to the loss occasioned to the dependants by the death as determined by the board, but in no case shall the total compensation exceed 50 per cent of the net average earnings of the deceased worker at the time of injury, and the compensation shall be payable only so long as the worker could have been reasonably expected to continue to support the dependant or dependants as if the deceased worker had not suffered injury."

On that subsection, Mr. Chairman, I have a point to raise, on the phrase "are entitled to reasonable compensation." Why does reasonable compensation come into the picture? Going by the content of this subsection, the board has discretionary power to decide up to a certain limit.

This is something I really do not appreciate. Why reasonable compensation? Why does the adjective "reasonable" come into the picture?

Mr. Cain: The rationale, of course, is that it is often difficult to identify the amount of money which the deceased has paid the parents, in the case to which you are referring. Therefore, one can never be quite precise as to the amount of money that should be provided to them.

Often, the deceased is not maintaining the household, for example, although the deceased may be maintaining the household. In that case, they would be entitled to more.

Mr. Lupusella: Again, we are getting into some controversial positions. The board, in its wisdom, might decide that, at the time of the fatal accident, the injured worker did not have any mortgage because the mortgage was paid up. There are no debts left by the deceased worker, which means that the board is going to say, "Well, this family will not suffer a great deal of financial loss because there are no debts involved." The board will decide to award in the form of a scale up to the maximum of 50 per cent of the net average earnings. However, there is no minimum decided on here at which the board has to start this scale.

What I see here is something like the awards of permanent disability pensions, which they start from one per cent up to 100 per cent, but it is the board which decides the percentage of disability. I see something similar in which the board has a lot of power to decide as to whether or not the dependants are really in a peculiar situation--even though I see the maximum, which is set up at 50 per cent of the net average, and which should not exceed that figure. However, the board might start with 10 per cent of the net average earnings.

I do not know if I have made my point clear. The board has a

lot of power here to decide what the loss will be, starting from one per cent to 50 per cent. Even though 50 per cent of the net average earnings might sound good, the board is going to set up limits of five or three per cent of the net average earnings. I do not know what kind of procedure the board is going to apply to identify that this family is facing a loss.

Mr. Cain: There are a number of factors to take into consideration--that is, the amount of money the individual is putting into the household, and, I would assume, to some degree, the amount of money that this represents against the total paycheque of the individual who is now deceased.

For example, in some cases, I suspect that people are only paying a few of the bills of the house, perhaps the telephone bill, the light bill and so forth, and in other cases more. However, that is partially the rationale. I am not saying it is--

Mr. Lupusella: However, the criterion I foresee is that if the worker were alive, he would have taken his cheque on a regular basis, based on the amount of his earnings, which are decided by working with a specific company. When the worker is gone, there is no such income going out, so we are talking about a lump sum payment, a maximum of \$40,000.

However, I still do not understand the scale of the net average earnings, at the time of the injury, which will be implemented by the board.

Mr. Cain: I just want to make sure--

Mr. Lupusella: And also "reasonable compensation proportionate to the loss occasioned to the dependants." The loss is the loss of his cheque because he is dead. That is the principle which I see.

Mr. Cain: You know that we are not referring to spouse and children here. It is other members of a family, such as parents.

Mr. Lupusella: Oh, parents.

Mr. Cain: You see, it is not the spouse or the children. The spouse with children gets 90 per cent in the scaled-down versions of the previous subsections. This is purely people other than--

Mr. Lupusella: Oh, a worker who is not survived by a spouse, a child or children.

Mr. Sweeney: Spouse and children are in the earlier subsections, Tony.

Mr. Lupusella: So you are actually talking about the father or mother, perhaps.

Mr. Cain: That was what I was referring to. I am sorry.

Mr. Lupusella: Oh, I see.

Mr. Sweeney: Any dependants other than spouse or children.

Mr. Lupusella: Oh, I am sorry. I missed the first part. So, reasonable compensation. Now we are going to get to my amendment. What kind of a scale is reasonable compensation? Is a lump sum given to them, or what?

Mr. Cain: No. This does not refer to a lump sum.

Mr. Lupusella: No lump sum.

Mr. Chairman: Your amendment, subsection 36(17)--

10:20 a.m.

Mr. Lupusella: This subsection is still unclear to me, Mr. Chairman, because I really do not know. The reasonable compensation and those--"in no case shall the total compensation exceed 50 per cent." I do not know what kind of formula will be implemented to establish the reasonable compensation.

Mr. Sweeney: Okay. As I understand it, what we are talking about here are people who may be dependant upon the deceased worker. We are not talking about his spouse, his wife or his children. That is not what we are talking about. It could be brothers and sisters, or it could be--

Mr. Lupusella: Father or mother.

Mr. Sweeney: --mother and father (inaudible). But the thing is the relationship between the deceased worker and any other kind of person, except his wife and children, could be so different that you really cannot fix a figure.

What I see them saying here is, "We will take a look at what the financial relationship was between these people and make a reasonable settlement, but in no case can it be more than 50 per cent." That is what it says. Whether you agree with it or not is another matter.

Mr. Lupusella: The reasonable settlement gives lots of discretion to the board to decide.

Mr. Sweeney: Yes.

Mr. Lupusella: It can even be one per cent of the net average earnings of the deceased worker.

Mr. Sweeney: Sure.

Mr. Lupusella: If we are playing with maximum figures, why do we not establish a minimum as well?

Mr. Sweeney: Because I guess you have no way of knowing in advance what kind of financial dependency any individual worker

would have with those other dependants. It could be a case where his parents have no other source of income and he may be paying all the bills in the house. It could, on the other hand as Doug Cain said, be that the only bill he is paying is the phone bill, or maybe he is giving them \$25 a week as room and board, or something.

The range is just so wide. I think that is the problem.

Mr. Gillies: You may actually think this section is quite progressive, because in the current act there is a fixed dollar maximum. It says it can be no more than \$564 a month, which is right in the act. Under this one, it gives the board a lot more leeway, because when we are talking about people now in the salary range of the high \$20,000s or \$30,000s, it does give the board a lot more leeway to make a more generous award.

Mr. Laughren: Where is it in here--maybe it is here and I cannot see it--where you have a dependant child and the dead worker's dependant mother?

Mr. Gillies: Dependant child and--

Mr. Sweeney: Five and six combined.

Mr. Gillies: It would be a combination of the two sections, I guess. The dependant child would get the award under section--

Mr. Sweeney: Subsections 4, 5 and 6 all together.

Mr. Gillies: Yes.

Mr. Laughren: So that would be covered. You add them all together.

Mr. Gillies: Yes.

Mr. Cain: Excuse me. As it is written subsection 36(6) says, "Where a deceased worker is not survived by a spouse, a child or children and there are dependants," if there is a child, you cannot pay a dependant pension to anyone else.

Mr. Sweeney: There is none. Okay.

Mr. Laughren: So, if you have a child--and that is possible. As a matter of fact I know of an example where a man lives with his child and his mother. His wife left. If that man was to be killed on the job and the mother is now dependant on that worker, as is the child, what happens to the mother and the child?

Mr. Cain: Under subsection 11, that mother would stand in loco parentis to that child and would receive 90 per cent of net until that child reached 19 years of age.

Mr. Laughren: What would the child get?

Mr. Cain: The child, during that interval, would get nothing, because there would be 90 per cent going to this person who is standing in the stead of the father. The child would get the \$40,000.

Mr. Laughren: The child would get the \$40,000--

Mr. Cain: The child would get the \$40,000 lump sum and the 90 per cent of net would be paid to the mother until the child reached 19 years of age. Then, of course, if the child continued in school, it would be adjusted, but as long as the child was still dependant on that mother.

Mr. Chairman: I wonder if this is the appropriate clause to be inserting what you have as subsection 17, because that is the situation of the mother and father, is it not?

Mr. Cain: Pardon?

Mr. Chairman: Did you see these amendments that Mr. Lupusella has introduced?

Mr. Laughren: There is still a gap on this one.

Mr. Chairman: This is the area Mr. Lupusella was talking about yesterday. The mother and father should receive compensation when a working child is killed. Does this address it?

Mr. Revell: This amendment does not address it.

Mr. Chairman: What I am trying to do is find a spot to insert the amendment Mr. Lupusella wants to make. Is this the right place?

Mr. Laughren: Why do you not let me finish my point first?

Mr. Chairman: All right. Let us go ahead with your point.

Mr. Laughren: To go back to the scenario I laid out with the dependent child and dependent mother of the worker where the child gets \$40,000, the in loco parentis--it sounds like a sidekick of the Lone Ranger--would get 90 per cent of the net until that child is out of school. When that child leaves and moves to Calgary to take advantage of the new oil boom under the federal Progressive-Conservatives, what happens to the mother?

Mr. Cain: I suggest you would go back to subsection 36(6) and you would look at it in terms of a few of the phrases there. I am trying to find it. It says, "...and the compensation shall be payable only so long as the worker could have been reasonably expected to continue to support the dependant or dependants..."

Therefore, if one could establish or satisfy oneself that in spite of the fact this young person is now 19 and has gone off somewhere else, had the individual, the father, not died, he would have continued to look after his mother, I think that subsection 6

is enacted and you start paying the mother something, but it is based on how long you would expect him to help to look after her.

Mr. Laughren: What would you then pay that mother?

Mr. Cain: Something up to 50 per cent.

Mr. Laughren: It says the surviving child, but not a dependent child. That would not rule it out.

Mr. Chairman: Can we get an answer?

Mr. Gillies: The question is about the child no longer being dependent, but still surviving, and about barring the parent from receiving benefits under subsection 6.

Mr. Cain: I would say not because that child is no longer receiving a benefit from the Workers' Compensation Board.

Mr. Laughren: Since you have put your heads together on this, and that is an awesome collectivity, I will accept that.

Mr. Cain: That is the way I would see it.

Mr. Chairman: Are we prepared to dispose of subsection 36(6) of the act as set out in section 9 of the bill? Shall it carry? Carried. We can go on to.

Mr. Lupusella: Do you want me to read my motion?

Mr. Chairman: I do not know. Let me think.

Mr. Lupusella: We should read all the clauses if we have to follow.

Mr. Revell: I would place them at the end in terms of legality. It does not matter whether they come in the middle or the end, but in terms of renumbering and so on, it leads to the least structural change.

Mr. Chairman: We will go on to subsection (36)7 then.

Mr. Lupusella: Subsection 36(7) says, "Payment shall be made for the necessary expenses of burial or cremation of a deceased worker, in an amount as fixed from time to time by the board, which amount shall not be less than \$1,500, and, where owing to the circumstances of the case the body of a worker is transported for a considerable distance for burial or cremation, a further sum, as determined by the board, shall be paid for the necessary extra expenses so incurred."

10:30 a.m.

On that subsection, we always thought in the Legislature that \$1,500 is not enough. I think that on different occasions I made observations about the principle that ethnic people spend a lot of money for a deceased person, which will not be in the range of \$1,500, but sometimes will reach \$5,000 or \$6,000.

Our position in the Legislature was to set the amount in the range of \$2,700, and I think it is appropriate to change the figure at this stage.

Mr. Chairman: Are you prepared to amend that minimum of \$1,500?

Mr. Lupusella: Yes, I would amend it to \$2,700.

Mr. Sweeney: Can someone tell me how the figure of \$1,500 was arrived at? I know it says "not less than," which means it can be more; I understand that. But what is the rationale for \$1,500? Is that the minimum cost for a burial in Ontario?

Mr. Cain: Currently, \$1,500 is the amount recorded in the Workers' Compensation Act, so it was simply a matter of putting that in as the base amount. It cannot be less than what is already recorded in the current Workers' Compensation Act, and then it goes on from there.

Mr. Sweeney: As has been drawn to your attention, frequently even a modest funeral can run up to \$2,000 plus today; that is nothing elaborate. Is there any connection or any relationship between typical funeral and burial costs in Ontario and a figure like this? This figure is now perhaps out of date because of inflation. I do not know what the figures are. Thank God, I have not had to bury anybody recently.

Mr. Gillies: I will try to get that, John. I would just say the current act speaks to a maximum figure. I think it is an improvement in this bill that we speak to a minimum, which would give the board some flexibility.

Mr. Sweeney: I have no qualms about that. All I am saying is that even at that, is it possible in Ontario today to have a modest burial arrangement for \$1,500? I would suspect not. In other words, I would suspect that a figure in excess of \$2,000 is probably more reasonable for today's legislation, but I do not know what the figure would be.

I would prefer to have it worded this way. I think that saying "not less than" allows for discretionary expenditure in excess of. That is fine; I do not want to change that. But perhaps we should check, let us say, three or four funeral homes at random. I know my mother recently bought a prepaid package; it looks pretty modest to me, and it is going to run close to \$3,000.

I really think the \$1,500 from the old legislation might just be so far out of date that we are risking looking foolish by even having it in there. I would suggest we check this. We might come up with a figure we can all accept because that is just what the norm is.

Mr. Gillies: Can I undertake to look into that and report back to the committee? If you would like to stand that down, I would be quite happy with that.

Mr. Sweeney: I am sure there must be a figure we can agree is reasonable in today's circumstances, one that makes more sense, instead of just taking a figure out of an act that was passed quite a number of years ago.

Mr. Gillies: We will have the ministry check with some funeral homes and see what a reasonable figure is and whether we might be able to address that.

Mr. Lupusella: Subsection 36(8) says, "Subject to subsection (9), where compensation has been paid under subsection (2) and no child is under the age of 19 years, the spouse shall be entitled to payment of compensation under subsection (3) as if the worker had died on the day after the day the youngest child then living reached the age of 19 years."

Mr. Chairman: We probably should deal with subsection 36(9) at the same time.

Mr. Lupusella: Subsection 36(9) says, "Where the board is satisfied that it is advisable for a child or children over the age of 19 to continue education, the board shall pay in respect of each such child 10 per cent of the net average earnings of the worker at the time of the injury but the total benefit in respect of the spouse and such children shall not exceed 90 per cent of the net average earnings of the worker at the time of the injury."

Mr. Chairman: Do you have a question, Mr. Laughren?

Mr. Laughren: Why is it 90 per cent? We are not talking about an incentive to return to work. I understand the Tory philosophy of thinking that workers need an incentive to go back to work. I do not agree with it, but I do not understand this 90 per cent here. What is the 10 per cent penalty for?

Mr. Chairman: Mr. Cain?

Mr. Gillies: I remember we debated this before. I do not think the 10 per cent is seen as a penalty. I think the committee's interest was in trying to improve over the status quo. Going to at least 90 per cent net, as opposed to 75 per cent gross, can benefit those with dependants and so on to a greater degree.

Mr. Laughren: You can use all the camouflage words you like. The point is, if you get 90 per cent instead of 100, it is a 10 per cent penalty. I know you do not like the word "penalty," but that is exactly what it is. I do not understand why you see fit to select this particular group to penalize to the tune of 10 per cent. It is beyond my comprehension. I would like to have at least an explanation of the thinking behind it.

Mr. Cain: Could I just explain it from the developmental point of view? The rationale was that 90 per cent of net approximates take-home pay. Therefore, the injured worker is entitled to 90 per cent of net. The dependants receive exactly the same amount of money as the worker would have received had he been

injured and off work, because the home still has to be maintained, there are the children to feed and clothe and so forth.

The rationale is that the family as a unit should get exactly the same as the injured worker, and the reason for the worker getting 90 per cent of net is that it equates to take-home pay.

Mr. Laughren: So you are saying 90 per cent of net is equivalent, roughly, to 75 per cent of gross.

Mr. Cain: No. I am saying 90 per cent of net is equivalent to take-home pay. You may recall that we had the actuaries provide you with some charts at the last session. That is the basis.

Mr. Laughren: Yes, I do remember. I also remember--and correct me if I am wrong--that you argued that 90 per cent of net was an improvement on 75 per cent of gross for some workers.

Mr. Cain: For some, that is true.

Mr. Laughren: And it is less than 75 per cent of gross for workers at the higher-income levels.

Mr. Cain: That is also right.

Mr. Laughren: Has the philosophy changed, that there is not to be any financial penalty on injured workers now on remuneration? Is that a new philosophy which has been slipped in without my even being aware of it?

Mr. Cain: You may recall that when Professor Weiler appeared before the committee, he made two or three comments on why he felt 90 per cent of net was appropriate. He also gave reasons he did not think it was appropriate, but only one of his reasons referred to the incentive to go back to work. He made it the third reason, the least important.

As I recall, his first and foremost reason was the business of equating the compensation to the take-home pay of the worker.

Mr. Laughren: Okay. This section is subject to the ceiling?

Mr. Cain: Yes, it is.

Mr. Laughren: If the deceased worker was at the high-income level, like an underground, bonus miner or somebody in construction perhaps, there could be a considerable penalty on the family here because of the ceiling.

Mr. Cain: They would not be receiving an actual 90 per cent of their pay. You are quite right.

10:40 a.m.

Mr. Laughren: No, they would not be, so we are back to the penalty.

During the debate in the Legislature on another bill--it was Bill 99, was it not?--do you recall where the increases were brought in towards the end of the spring session? I wish the Minister of Labour (Mr. Ramsay) was here. During that debate, when I was attempting to ask the minister about this whole question of penalty, he said, "We will debate that during the clause-by-clause on Bill 101." The Speaker allowed him to do that. I was completely baffled as to how you could pass off debate on one bill to another bill, but that did not bother John Turner at all. He is unflappable when it comes to the rules of the House.

And here we are, we have reached the stage where we have been told we should be debating it, and I am groping for some kind of justification to families of deceased workers as to why they should be expected to live on less than they were living on when the worker was alive. Perhaps it is my naïveté that I do not understand the thinking behind that kind of penalty.

Is our society so poor that it is from there that we have to extract some money? Is that the only kind of compensation system we can afford, to extract it from the survivors of someone killed on the job? I do not understand why you would want to raise taxes that way. People who are out there, well and working and reasonably contented, pay their fair share.

What I do not understand is the extraction of a surtax on survivors of workers killed on the job. That is what you are doing, imposing a surtax on these people, people who should least have to pay it. That is something I cannot grasp and cannot understand. If you were to use the argument that workers need an incentive to get back to work--I understand you have this philosophy or attitude towards workers that they really do not want to work, that they would rather be on compensation. I have seen that time and time again. I have certainly seen it at the board. I do not agree with it, but at least I know where you are coming from.

I do not know where you are coming from on an issue like this. This is an incentive to do what? What is the 10 per cent penalty supposed to do? What is it supposed to motivate someone to do? If it is not supposed to motivate someone to do something, then why is it a penalty? I would like to know the thinking behind that. We can talk more about the 90 per cent when we get into that section, but for the survivors I simply do not understand it.

There is an enormous amount of pain and suffering involved where people lose someone because of a death on the job. I do not think I can even grasp it. If you were to say, "That is very serious and we think there needs to be some kind of appreciation of that," I suppose you would say the \$40,000, plus or minus, is supposed to represent that. But over a period of time, with children and educational responsibilities and so forth, that does not make up for that penalty on a monthly basis. For those reasons, I think you really should reconsider this whole question of imposing a penalty on survivors.

Mr. Lupusella: Mr. Chairman, I would like to associate my feelings with those expressed by my colleague. I was planning to say the same thing he said a few minutes ago.

When we are dealing with permanent disabilities ranging from 10 per cent, a lot of people might question whether the person is really disabled, and why he is not doing the work which he used to do. However, when we get into the main thrust of compensation, the people who gave their lives as a result of the work they were doing--that is something I will never understand. We are not dealing with political philosophy and so on. We are dealing with clear-cut cases.

By using the example given yesterday, I am sure that the spouse and children of a policeman who died in the line of duty are very well treated, perhaps because we are using public funds. I really do not know. However, the employers across Ontario pay a premium, and are not willing to pay what is just and fair for people who give their lives to improve their economic environment in the work place. The position taken by the government is something which I really do not understand.

As regards this particular subsection, why the board should be "satisfied that it is advisable for a child or children over the age of 19 to continue education"--again, we are dealing with discretionary power given to the board, and we know how the board is using the discretionary power.

Mr. Chairman: I think we had that answered, did we not?

Mr. Lupusella: No. I am not satisfied. If a dependant child reaching the age of 19 would like to go to university--and perhaps the board would not see good marks--the board might take the position that it is not advisable to go to university, which again is an extra way to penalize dependents, children who would like to continue their education. It is up to the board to decide whether or not that child over the age of 19 has to continue his education at university, which means that the marks would be an indication as to whether or not he has to continue.

Mr. Chairman: I think that deserves a response from Mr. Cain, because we had that explained to us once. For re-emphasis on that point, Mr. Cain, would you like to respond, please?

Mr. Cain: I believe it was about two weeks ago that I mentioned that this particular subsection is in the act primarily to deal with the professional student. The board is not going to stop some young person from going on to school. It probably was the plan of the family before the worker was killed.

What we are saying is that you may get someone who is 24 or 25 years old, maybe older, who does not seem to have a focus or a particular program that he or she is heading towards. You can imagine that person being in school for the next 10 or 15 years. It is true, in this case, that the board will probably stop it, but that is in the case of a professional student, and I do not

believe we have ever applied that section in any way other than that.

Mr. Lupusella: I do not know. I have never dealt with cases like that. Maybe you are right, but again, the board has a lot of power to decide, based on that, which bothers me.

I have a question on the 10 per cent of the net average earnings. Subsection 36(9) reads: "the total benefit in respect of the spouse and such children shall not exceed 90 per cent of the net average earnings of the worker at the time of the injury."

This is the question which I would like to raise before you. There is a possibility that the child might get less than 10 per cent, in combination of the benefits which the spouse might receive. That might be close to 90 per cent, plus the 10 per cent of the net average earnings of the worker. I see a scenario in which the spouse might already get 90 per cent, which means that the dependant child will not even get 10 per cent.

10:50 a.m.

Mr. Cain: The spouse could never get 90 per cent under this particular subsection. The situation is perhaps that they have two children; one child has passed age 19 and is continuing in school, but the other child is still under 19 so the spouse is receiving 90 per cent of the net.

When the second child reaches the age of 19--and let us assume the spouse is 40 years of age at that time--the spouse would receive a 40 per cent pension. The two children in this example I am giving you are still in school so there would be 10 per cent for each of them, so there would be a 60 per cent pension continuing.

Mr. Lupusella: The age of the spouse is going to play a big role in establishing the total 90 per cent of the net average. On reaching a certain age, the benefit is lowered for the spouse, as I understand, and in that particular case, eventually the 10 per cent for the dependant child of the net average earning of the worker will be applied, but there are cases where not even the 10 per cent is applied, based on the age of the woman, because she or he will get more money before reaching the age of 40.

Mr. Cain: For example, the--

Mr. Lupusella: The limit, the maximum is 90 per cent period, no more than that.

Mr. Cain: To give you an example of the possibility is if the woman was 60 years of age or more, she would be entitled to a 60 per cent pension when the last child reached the age of 19.

Let us assume she has four children, all still in school. That would add up to 100 per cent. You are right, she would only get 90 per cent. If she has three children or fewer, she would get 90 per cent. So there are circumstances when that is true. They are unusual, but they are there.

Mr. Lupusella: It is the unusual circumstances that bother me. Who will be penalized in that specific case, the spouse or the child who will not be receiving 10 per cent because the total package for the wife is already reaching 85 per cent? The child will eventually get five per cent to reach the maximum of 90, or the wife will get less to get the 10 per cent for the child.

Mr. Cain: All I can do is go back and explain the original rationale, which is that an injured worker gets 90 per cent of net because people say it equates to take-home pay. Therefore, if he was alive and those children and spouse still existed as a family, and he was off work, he could not get more than 90 per cent of net, so one assumes that the family lives on 90 per cent of net.

That is why one cannot go beyond that maximum. I am just explaining it as it is outlined.

Mr. Chairman: He can only give the administrative point of view.

Mr. Gillies: If I might, in listening very carefully to the concerns raised by both, I think that makes a very good point. Ninety per cent of net for a surviving family is probably roughly equivalent to take-home pay when one considers the deceased worker's deductions and so on, his expenses of going to work and so on, I am not convinced that the family is really being penalized to any great extent.

Keep in mind the improvements of this section of this existing act, all the various improvements, including the lump sum payment for the noneconomic loss, although as Mr. Laughren pointed out, one cannot really put a price on someone's life, but in recognition of the suffering and the other problems a family will go through, there is now the lump sum.

Mr. Laughren: You conveniently ignore the ceiling too.

Mr. Gillies: Yes. The 90 per cent up to \$31,500, I quite agree, and I do not intend to ignore that.

Mr. Sweeney: Whether the worker is alive or dead.

Mr. Gillies: Exactly, but I think when one considers the lump sum payment, the 90 per cent, even taking into account the ceiling as opposed to the existing situation with regular payment ceasing for the children at age 16 unless they could prove that they were students, and having raised that to age 19, and also the legislative dollar maximum of \$564 a month for the surviving spouse in the old act once there were no surviving dependant children, I think many surviving spouses will do a lot better than that under the new act.

Mr. Lupusella: I understand, and maybe your position based on the principle of the legislation makes sense; my concern is that eventually there are situations in which the children will not even get the 10 per cent. That is what I am questioning, and there are cases in which maybe such 10 per cent of the net average

earnings will not be applied, based on the number of children, for example, and the age of the spouse.

Mr. Sweeney: But the children do not get the 10 per cent, Tony. The 10 per cent is added to the total family income because there is a child there going to school. It is not as if each child going to school suddenly gets 10 per cent of his father's former income for himself.

Mr. Lupusella: They should.

Mr. Sweeney: That is not the way the legislation is designed. If that is what you want it to say, then you better put another amendment in. That is not what this is designed to do.

Mr. Lupusella: Unless I am reading the subsection wrong, we are talking about benefits for the spouse, plus 10 per cent of the net average earnings for the child and the total amount should not be above 90 per cent. That is how I read the subsection, unless I am wrong.

Mr. Gillies: What you are suggesting--

Mr. Sweeney: It is the total--

Mr. Lupusella: We are talking about two benefits, one for the spouse--

Mr. Cain: It is a total package because the family is still existing in a household.

Mr. Gillies: That is right. I do not want to put words in your mouth, Tony, but are you saying that depending on the number of children, the benefit income after the death of the breadwinner could in fact be greatly in excess of the family earnings when he or she was alive?

Mr. Lupusella: No.

Mr. Gillies: If you follow what you are saying to its logical conclusion, there should not be sort of an overall package that tries as best as possible to approach the former family income.

Mr. Lupusella: The logical approach, based on my own interpretation of this subsection, is that the child gets 10 per cent of the net average earnings of the worker up to the time of the injury and the total benefits in respect of the spouse and such children shall not exceed the 90 per cent of the net average earnings.

I see two packages of benefits and the package of benefits for the dependant child over 10 per cent in certain instances will not be applied because of the maximum of 90 per cent, which in some cases will not be applied.

Mr. Cain: I think the chance of it happening is remote,

though it certainly is possible if there are enough children over 19 years of age still going to school.

I suppose one comes back to maintaining a household and the money goes to the spouse because that is the individual who still, as the deceased would have done, brought the money into the house and then handed it out as they see fit, for clothing, food, allowances for the children and so forth. I assume that is the thought behind it.

Mr. Laughren: I just realized that both Mr. Cain and the parliamentary assistant used a dishonest argument on me. When you were talking about 90 per cent--

Mr. Gillies: Inadvertently.

Mr. Laughren: I do not know that.

Mr. Chairman: I think that should be qualified.

Mr. Laughren: I will await your explanation.

Mr. Chairman: First of all, I think your words should be qualified.

Mr. Laughren: I said I would await the explanation.

Mr. Chairman: Perhaps you would like to reconsider that.

Mr. Laughren: When we were talking about 90 per cent--

Mr. Chairman: First of all, I think you should reconsider your choice of words.

Mr. Laughren: I did not say they were dishonest. I said their arguments were.

Mr. Chairman: You mean that is okay? I think perhaps you should qualify it or change it.

Mr. Laughren: If the Speaker can make the kind of rulings he did on the debate on 99, I can rule on my own behaviour in this committee.

Mr. Chairman: I would like that choice of words changed in some way.

Mr. Laughren: All right. I will say that I realize that the arguments used by the parliamentary assistant and Mr. Cain are not fair.

When you talk about 90 per cent of net being equivalent take-home pay, you look at what is being deducted there. You look at income tax, fine. You look at Canada pensions and unemployment insurance. Is the surviving spouse having Canada pension premiums paid for her? Can she draw UIC? Are UIC payments being made for her?

11 a.m.

Mr. Cain: No, they are not being paid. No, you are quite right.

Mr. Laughren: They are getting 90 per cent of net without getting the benefits flowing from that reduction of 10 per cent: namely, Canada pension and unemployment insurance. Is that right?

Mr. Cain: That is right.

Mr. Laughren: Do you think it is fair to say that that 90 per cent is equivalent to take-home pay?

Mr. Cain: I guess one would have to qualify--although I was not thinking of it at the time, Floyd--that it is the take-home pay that is identified when you calculate gross earnings down to net earnings. I do not disagree with that at all.

Mr. Laughren: There are benefits to the difference between gross and net; there are certain benefits accruing to the worker: namely, Canada pension and unemployment insurance. The survivor may be getting Canada pension benefits anyway. Is that right?

Mr. Cain: Yes, quite possibly.

Mr. Laughren: Although you have looked after that very nicely, too. What a bunch of scoundrels. They are not getting the benefit of unemployment insurance, so I think you are not using a fair argument when you talk about its being equivalent to take-home pay.

Mr. Gillies: I will certainly qualify it, but I did also say, Floyd, when I made my remarks, that you have to take into account the other things associated with the cost of the breadwinner going to work. There are expenses that the family will not incur after the death that it did incur before. I do not mean that to sound callous, but if you are talking dollars--

Mr. Laughren: They can also claim it on their income tax form.

Mr. Gillies: As we all know, there is an expense involved in going to work.

Mr. Laughren: There are extra expenses incurred in not having that other person around the house, too. I just do not like the way you are--

Mr. Lupusella: How are low-income people treated under this section? We always mention people who are making a lot of money, so 90 per cent of the net might make sense for you, though not for us. How are low-income people going to be treated under this specific section?

Mr. Chairman: They will also receive 90 per cent of their net pay, so if it is \$12,000 or \$14,000--

Mr. Lupusella: Yes. Let us say the breadwinner used to make \$10,000 a year and he is deceased. On \$10,000, what is the total package here?

Mr. Cain: The minimum is \$10,500 a year.

Mr. Lupusella: It is \$10,000?

Mr. Cain: No, \$10,500.

Mr. Lupusella: Okay, \$10,500.

Mr. Gillies: So if you take various deductions and so on--let us assume a \$10,000 gross income--take into account your exemptions, expenses, CPP, UIC--

Mr. Lupusella: Net (inaudible) of \$8,000.

Mr. Gillies: According to the figures I have for a single person, you are looking at \$7,857; for someone who is married with no children it is \$8,663.40, and that figure remains the same, according to this calculation, for someone married with two children. That surprises me, I might say.

Mr. Lupusella: For a single person, a person who is married with no children and a person who is married with two children. That is the typical case: married with two children; \$10,000 gross income minus exemptions and so on gives a net income of \$8,663.

How is this subsection applied on the 90 per cent of net income of \$8,663? Let us consider the package for the spouse and the 10 per cent that is applied for the two children.

Mr. Gillies: Doug, do you have that? What do they end up with, roughly?

Mr. Cain: They can still receive only 90 per cent.

Mr. Lupusella: Of this \$8,663?

Mr. Gillies: No, I am sorry. Those figures I read are the 90 per cent.

Mr. Chairman: The bottom line. We all have a copy of their table.

Mr. Lupusella: This is the total package of benefits they will receive under subsection 36(9)?

Mr. Gillies: Assuming a gross income of \$10,000--

Mr. Lupusella: More than \$10,000.

Mr. Gillies: --which leaves you with a net income of \$9,626 with two children, and 90 per cent of that is \$8,663.40.

Mr. Lupusella: On the \$25,000 gross income, the 90 per cent of net income is \$18,451.97, so we are dealing with the same case of a fatal accident and the same number of children. One family lives in poverty and the other is better off because the breadwinner was making \$25,000.

Mr. Chairman: That would not change the death that has now occurred, would it? You still have that amount of money coming into the house.

Mr. Gillies: I appreciate what you are saying, but it is a--

Mr. Lupusella: We are considering the death per se, which is applied equally to both families. It is the same, but what we are not considering for low-income people is that the breadwinner might in two or three years have earned an amount equal to that of the person who at the time of the fatal case was making \$25,000. One family will be living poor for the rest of its life, while the other will be living on 90 per cent of net income or \$18,451.

When Mr. Laughren talks about penalizing people as a result of this type of compensation, he is damned right.

Mr. Gillies: I guess all I can say is that your argument leads to--

Mr. Lupusella: My argument is that with fatal cases we should not compromise figures. That is my interpretation of a fair and just compensation system in fatal cases. There is a lot of tragedy involved. I do not see why we are faced with families on a low-income scale who will be living poor for the rest of their lives compared to others who were more fortunate and made \$25,000.

Mr. Gillies: There are two points. First, with respect to replacement income, it is an insurance scheme, and that is what the whole system is based on. While your argument has some merit, you are talking about a completely different system that is not addressed in this bill.

Second, I remind you that under Bill 101 the lump sum payment going to the surviving spouse does not vary with income; so there is a very tangible improvement there. It is based only on age, and the low-income surviving spouse gets the plus or minus \$40,000 or whatever it is just as the higher income one does and achieves considerable benefit there that was not in the old act.

Mr. Laughren: Staying at this 90 per cent for the moment, I am concerned about who will be worse off under it. You will remember we had a chart done for us. A lot of those numbers are blurs in my mind by now, but it showed us one would be worse off with 90 per cent than he would be with 75 per cent gross. I believe it was in the higher--

Mr. Sweeney: More than \$20,000.

Mr. Laughren: More than \$20,000. Because the average industrial wage is, I believe, now more than \$20,000, we are penalizing more people than we are helping. Second, because of inflationary factors, it seems to me that is going to be even more of a penalty as time goes on. If it is more than \$20,000 now, next year it will be more than \$21,000 and the next year it will be more than \$22,000 and so forth. Is this not also one area where the board saves money every year?

Mr. Gillies: I think there was a small saving. In the context of all the money paid out, I think it was \$14 million. I am not saying that is peanuts, but in the overall scheme of things it is really not that much.

11:10 a.m.

Mr. Laughren: It is usually the Liberals who say, "What is a million?"

Mr. Gillies: I know, and look where they are.

Mr. Laughren: Look where you are heading if you keep that up.

I just do not know why as a committee we would agree to reduce the level of benefits to the majority of injured workers who would be on total disability. I do not think that was the intention of the members of the committee. I do not think any of the members of the committee launched into this exercise with that in mind. Correct me if I am wrong here. I have heard some people say I am naïve in this regard, but I do not think that was Paul Weiler's intention either.

I do not know about the board and the ministry. They have to answer to themselves for themselves. I do not know why we would implement a system where there is total temporary benefit. That is an important aspect of compensation. If we are going to impose that penalty on most injured workers--and that is not an exaggeration--then why are we doing it?

Mr. Sweeney: Before you answer that question, can I ask another one which might partially lead to a doubt?

Do you have the figures there? I know we were given them at one time, but I do not know where they are. They show what the median wage is. I know the average industrial wage is more than \$20,000, but I think the argument was made that it is because there are enough people earning big wages to bring that average up. In fact, if you take the median point, 50 per cent of the working population, it is actually below \$20,000, I think. I do not have the figure.

Mr. Cain: I do not have it with me. I know the chart to which you are referring. I can always get that information, but I do not know offhand.

Mr. Sweeney: You do not know what the figure is?

Mr. Laughren: I am waiting--

Mr. Chairman: You are waiting for an answer.

Mr. Gillies: Mr. Laughren, we in the ministry have certainly never apologized for proposing a scheme which is to the benefit of people with dependants. We feel it is a very progressive move to go from 75 per cent of gross to 90 per cent of net. I think there are many people under the Workers' Compensation Board--often the people with the greatest need--who are going to benefit from that.

I go right back to Tony's argument a few minutes ago; he was arguing for doing what we can for the lower-income people. While I share your concern that the people at the higher end of the income scale, depending on their number of dependants and so on, may not particularly benefit from the change, I think the scheme is skewed somewhat towards those in the greatest need and I think that is something we should be quite pleased about.

Mr. Laughren: What is bothering me is that as a socialist I believe in being my brother's keeper, and my sister's, too.

Mr. Havrot: How about a loan?

Mr. Laughren: You are not my brother.

Mr. Havrot: Thank God.

Mr. Laughren: I do not believe one group of injured workers should subsidize another group of injured workers. If the ministry declared war on poverty, it would throw stones at beggars.

What you are doing is really bizarre. You are saying we want one group of injured workers to be subsidizing another, namely, that the higher-income injured workers will subsidize the lower-income injured workers. Is that correct? That is what I do not understand.

Why would you subdivide the population into that kind of subset and say the high-income injured people are going to subsidize the low-income injured people? This is something that escapes me. Is that the best you can do in terms of equity?

Mr. Gillies: Surely the point is that if I accept that we are bringing in a scheme that is fairer--

Mr. Laughren: To some.

Mr. Gillies: I think it is fairer overall; so there is a slight shift in the allocation of money. Doug, how much do we pay out overall in benefits every year?

Mr. Cain: In total?

Mr. Gillies: In total.

Mr. Cain: Just over \$1 billion.

Mr. Gillies: Again, while I do not minimize it, you have on a number of occasions picked up on the fact that there is there is a \$14-million saving in this clause of the whole bill. Our overall costs are going up hundreds of millions of dollars. What I see is that a lot of people are going to benefit, a lot of people are going to get more money--

Mr. Laughren: And receive less of a penalty.

Mr. Gillies: --and the scheme overall is going to be somewhat fairer. As you say, if you believe in being your brother's keeper, some of the brothers are going to be sharing a little more equitably with some of the other brothers.

Mr. Laughren: It is the same with the unemployed. We want you to make a contribution to those people on welfare. The ones who are receiving unemployment insurance should be supporting the people who are on social assistance. I understand that.

Mr. Chairman: We have had enough wide-ranging discussion on this. Everybody will want to participate in the discussion. We are not even debating the point at this time. If you are ready to proceed with the vote we will proceed, or you may want to make an amendment. The ministry has given its answer as to how this was developed. We either have to accept that or reject it by amendment.

Mr. Lupusella: Yes. The amendment would be, and I think Floyd would agree--

Mr. Chairman: Floyd is not agreeing with anything this morning.

Mr. Lupusella: --that the people earning up to \$10,500 gross income should receive 100 per cent instead of 90 per cent.

Mr. Cain: In the case of a spouse and children, they do get the actual \$10,500. It is the base amount. It is when you get into the lower percentages that they become a percentage of \$10,500. For a spouse and children, if the salary of the deceased is \$10,500 or less, they get \$10,500.

Mr. Lupusella: Okay. Then let us consider the people who will not get the \$10,500.

Mr. Cain: There are some you see under another section, on page 12, subsections 4, 5 and 6.

Mr. Lupusella: Let us change "90 per cent" to "100 per cent of the net average earnings of the worker to the time of the injury." Instead of 90 per cent, it should read 100 per cent.

Mr. Chairman: That is your amendment, to change 90 per cent to 100 per cent, in the subsections using that figure?

Are there any amendments to subsection 8? We should deal with that first.

Mr. Laughren: Could I ask you about that? I must confess that while my mind is finely honed, it is not legal. When I see "subject to subsection 9," then reference to subsection 2 and reference to subsection 3, I get confused. If somebody asked me what section 8 means, I would not be able to tell him. I do not understand all those references. Is there a layman's easy answer to that one? I tried to read through it and got confused all over again.

Mr. Gillies: Let me attempt a short explanation.

Mr. Sweeney: Subsection 2 no longer applies. This says we revert to subsection 3 once 2 no longer applies.

Mr. Gillies: Yes. This section says two things. On benefits to a spouse where the children are not dependent, when his or her children are over age 19, the surviving spouse is entitled to continuing benefits calculated as if the worker had died on the date the youngest child turned 19.

Mr. Laughren: As though there were no dependants.

Mr. Gillies: Yes. It says that, and it says this means that while he or she has children under age 19, the surviving spouse receives payments at 90 per cent of net, but when the youngest turns 19, the spouse receives further payments based upon her age at that date. These benefits will range to a maximum of 60 per cent of the worker's pre-injury net.

11:20 a.m.

Those are the two points and the reference is back to the other subsections.

Dr. Wolfson: The effect is to be more generous to the surviving spouses. If this subsection had not been inserted, then the commutation of the continuing pension would have been based on the age of the spouse at the time of death and as that is lower, the continuing pension is lower.

Mr. Laughren: I have an uneasy feeling about this pension thing for surviving spouses, the way the formula is worked out. That is not this section--

Mr. Sweeney: That is section 3.

Mr. Laughren: Yes.

Mr. Chairman: Are we prepared to vote on subsection 36(8)?

Subsection 36(8) agreed to.

Mr. Chairman: We have an amendment to subsection 9. Shall the amendment carry? Those in favour of the amendment? Those opposed? The amendment is defeated.

Shall subsection 36(9), as printed, carry?

Subsection 36(9) agreed to.

On subsection 36(10):

Mr. Lupusella: Subsection 10 states: "Subject to subsections (8), (9) and (12), a monthly payment in respect of a child shall cease when the child attains the age of 19 years or when the board is satisfied that it is not advisable for a child over the age of 19 to continue receiving an education."

I disagree with the discretionary power given to the board. At any rate, I think it is unfair. Even though the principle I raised before is never applied by the board, I do not think it is up to the board to decide. It is up to the individual to decide as to whether or not an education after age 19 is appropriate. I would not like to spend four years in university without accomplishing my goals. I do not think people will abuse the section just for the sake of receiving the allowance from the board.

Mr. Laughren: I do not think you should skip over that. What was the thinking behind the statement "when the board is satisfied"?

Mr. Chairman: Is there any change in that from what the policy is now?

Mr. Gillies: In the present act we are talking about age 16. It has to be established that the child is a student continuing his education beyond age 16. Now they can continue for another three years without any discretion of the board whatsoever, which we think is a good move.

Mr. Laughren: What are the concerns of the board about having the discretionary power? Was there something that made you nervous?

Mr. Cain: Basically, as I mentioned before, it is the person who becomes the professional student who goes on. There are not many of them.

Mr. Laughren: I do not know what you mean by professional student. Do you mean someone who gets his PhD?

Mr. Cain: That is not what I mean. If a person has a program, a focus on something he wants to achieve, then it is quite reasonable that he should continue to receive this benefit. It is the person who continues in school for ever and does not seem to have an end purpose in mind.

Mr. Laughren: Would you accept it if we said, "a monthly payment in respect of a child shall cease when the child attains the age of 19 years or enrolls in law school"?

Interjections.

Mr. Cain: I like that.

Mr. Sweeney: I would like to make one point. I am assuming that in the case of both subsections 9 and 10 that is subject to the normal appeal procedures. Is that a correct assumption?

Mr. Cain: Absolutely.

Mr. Sweeney: It is not just a whim on some official's part. It can be challenged and it has to be verified?

Mr. Cain: That is correct.

Mr. Lupusella: That is the danger. That is the point I was planning to raise. If the board in its wisdom would decide it is not satisfied that it is advisable for a child to continue education--the position of the board will be challenged and if it is during the summer, until the case will be heard eventually the child will lose one year of university, based on the discretionary power given to the board.

Let us say I am 19 years old and I want to go to university. I tell the board I would like to continue my education and so on. The board analyses my situation and the goals, about which I am not too satisfied. The board rejects my allowance. Therefore, I cannot enrol at the university level if I depend on the allowance which I should be receiving from the board. If I launch an appeal, it may be too late to enrol myself at university, which means I might lose one year until the appeal system hears my case.

Mr. Laughren: What if someone goes back to school? Is that a problem? If someone quits school at the age of 17 or 18, whether or not he finishes high school, works for a year and then tries to enrol at a college or university, would he be okay?

Mr. Cain: From an administrative standpoint, I would think they would be okay. They are back in school, and there is nothing here that says they have to continue.

Mr. Chairman: Subject to any amendments to that, shall subsection 10 carry? Carried.

Mr. Lupusella: Subsection 11: "When a child or children is or are entitled to compensation under this section and is or are being maintained by a suitable person who is acting in loco parentis in a manner the board considers satisfactory, such person while so doing is entitled to receive the same periodic payments of compensation for himself or herself and the child or children as if the person were a spouse of the deceased and in such case the child's or children's part of such payments shall be in lieu of the periodic payments that the child or children would

otherwise be entitled to receive and, where there is more than one child and more than one person acting in loco parentis, the board may in its discretion apportion the payments under this section accordingly and, where this subsection applies, the maximum amount payable under this section shall not exceed 90 per cent of the net average earnings of the deceased worker at the time of death."

Mr. Laughren: Can I ask a question there? Is that really all one sentence?

Mr. Revell: Unfortunately, yes.

Mr. Laughren: Who drafted that? Do you think we could ferret out the drafter?

Mr. Chairman: Any further questions?

Mr. Sweeney: I am interpreting the second half of that, when it talks about "more than one," to mean that there may be two or more children and that two different aunts or uncles or somebody would be splitting the looking after of those kids and therefore the amount of money would be split. Is that what it means?

Mr. Gillies: Yes. It just puts them on the same footing.

Mr. Sweeney: But in all cases the total amount cannot exceed the 90 per cent.

Mr. Chairman: Shall--

Mr. Laughren: I am sorry.

Mr. Chairman: Go ahead. I was just going to ask, "Shall it carry?" That was my question.

Mr. Laughren: I am glad I spoke up. What is the purpose of "the board may in its discretion apportion the payments under this section accordingly"? Why do they need that discretion?

Mr. Cain: The board has to decide on the amount of money to pay each person standing in loco parentis. If you had two children living with two separate families and you are trying to apportion the 90 per cent in some way so that each child gets--

11:30 a.m.

Mr. Chairman: Or two with one family and one with another family.

Mr. Cain: Yes. That is always possible.

Mr. Laughren: The only thing that is wrong there, of course, is the 90 per cent.

Mr. Chairman: Mr. Laughren moves that "90 per cent" be changed to "100 per cent."

All those in favour of the amendment? Those opposed?

Motion negatived.

Mr. Chairman: Shall the subsection carry as printed?

Subsection 36(11) agreed to.

Mr. Lupusella: Subsection 36(12) says, "Compensation is payable to an invalid child without regard to the age of the child and shall continue until the child ceases to be an invalid or dies."

Mr. Laughren: I have a question on that. I am just nervous about the wording there, and thank goodness we have some law school graduates here to help me.

When that person becomes 20, 21, 22, he is no longer a child, and yet you are saying, "shall continue until the child ceases to be an invalid." Does this make an assumption that when he becomes an adult it still applies?

Mr. Revell: I am advised that a child is always a child.

Mr. Laughren: Oh, really?

Mr. Gillies: It is just to make it consistent in the sense that you are referring to the same person.

Mr. Revell: A child can be either over the age of majority or under the age of majority. Presumably you are still the child of your parents, even though you may be 40, 50 or whatever.

Mr. Laughren: Oh, I see. So it does not mean a minor.

Mr. Sweeney: You do not get rid of them when they are over 21.

Mr. Laughren: After that ruling I no longer resent as much the tax dollars I have paid to subsidize law schooling.

What is an invalid? That could be physical, mental, unable to look after oneself. Is that the idea? It is not in the definition section, is it?

Mr. Chairman: It is not in the definition section, apparently. Is it, or is it not?

Mr. Laughren: I could see a quarrel arising as to whether or not a person is an invalid.

Mr. Revell: It is defined in the act.

Mr. Laughren: Is it? Do you know where it is?

Mr. Chairman: In the act, not in the bill.

Mr. Revell: Page 3.

Mr. Lupusella: It says, "'invalid' means physically or mentally incapable of earning."

Mr. Laughren: I must have the wrong--

Mr. Chairman: Shall subsection 36(12) carry?

Subsection 36(12) agreed to.

Mr. Chairman: Let us move right along.

Mr. Sweeney: Excuse me, Mr. Chairman. I had a question before you passed that. I do not see any amounts there, so I assume it refers back to those previous subsections that set out the amounts. Is that a correct assumption?

Interjection: Yes.

Mr. Laughren: That is a good question, though. What happens if the parent dies and, say, one child is an invalid? If the surviving spouse lives to whatever age, and then the invalid child, who might be 35 years old at that point, continues to live, what happens then? Did you follow the question?

Mr. Gillies: Yes. The benefits continue.

Mr. Laughren: At what level, though?

Mr. Gillies: At what level are the benefits?

Interjection: Thirty per cent.

Mr. Gillies: Thirty per cent.

Mr. Sweeney: You are looking at clause 36(4)(b), in other words.

Mr. Laughren: There could be a problem, could there not?

Mr. Gillies: I just assume that someone in that situation would be receiving social assistance disability pension, would he not, under the Canada pension plan?

Interjection: I assume so.

Mr. Gillies: I am just assuming such a person would be getting CPP-D and possibly a Community and Social Services pension, too.

Mr. Sweeney: Yes, he would be getting a Community and Social Services pension if he is disabled. I cannot remember what it comes under, but he does get it.

Mr. Gillies: Yes. So almost certainly if he is disabled and unable to work, he would be receiving another pension or pensions.

Mr. Chairman: Okay. Care to move on to subsection 36(13)?

Mr. Lupusella: Under subsection 36(13), Mr. Chairman, we are going to have a long debate. It says, "In calculating the average earnings of a deceased worker for the purposes of paying compensation by way of periodic payments under this section, there shall be deducted from such earnings any payments received by way of any survivor's benefit under the Canada pension plan."

The one thing I note is the verb "shall." I thought it could use the verb "may" instead of "shall." It is a clear-cut case.

Mr. Chairman: Mr. Laughren?

Mr. Laughren: Yes?

Mr. Chairman: We already have a motion from you on this one.

Mr. Laughren: Where is it?

Mr. Chairman: You gave it to us yesterday.

Clerk of the Committee: To delete--

Mr. Chairman: What it says is that subsection 36(13) be deleted--

Mr. Laughren: Right.

Mr. Chairman: The proper way to handle that would be to vote against it. If there is a majority vote against it, then of course it is deleted.

Mr. Laughren: An even more proper way would be to speak to it now. It seems to me that we need to discuss it once more. Since you seem to be determined not to listen to reason, you must then be subjected to a continuing debate on this section.

I have yet to understand why you feel you must enter the Canada pension field, why you must involve yourself in the Canada pension issue at all. That is completely beyond me.

It is none of your business what other income the injured workers have that they have paid for. I am surprised that you have not been consistent, and decided to deduct any personal disability insurance the workers might have, which they paid for, as they paid for this.

Why are you so inconsistent? I almost hate to say that, because you might do it, but it would be no more illogical than to consider Canada pension earnings as a way of affecting the level of benefits paid by our Workers' Compensation Board.

What we are talking about here are the earnings of the survivors, right? We are not talking about temporary compensation, rehab benefits, or anything like that. What you are saying here is that, before benefits are paid to survivors, "there shall be

deducted from such earnings any payments received by way of any survivor's benefit under the Canada pension plan."

I do understand the section correctly, do I not, that "in calculating the average earnings of a deceased worker," you subtract from those average earnings the Canada pension benefits? What you do not do is subtract the Canada pension plan from the benefits; you subtract the Canada pension benefits from the deceased worker's average earnings.

I do understand that correctly, do I not? I do not know what the exact percentage would be, but it certainly means a very substantial reduction in the income of the survivors.

I would urge you to consider what you are doing here. You are saying that a contributory plan is one you wish, once again, to penalize the survivors for. If someone had never paid into the Canada pension plan--I guess everybody has now, right? For a while there was the situation where people had not paid into it long enough. That is still possible.

I can still think of situations where someone might not have paid into the Canada pension plan. They might not have been in the work force long enough to receive a pension. Those people would have nothing deducted from their average earnings in computing the benefits for the survivors. People who have paid into Canada pension, along with their employers, end up having Canada pension survivor benefits deducted from the average earnings, to compute what those benefits would be.

Since you seem so fiercely determined to impose this penalty on survivors, what I do not understand about the lack of consistency is why, at least, you did not take advantage of the suggestion I made much earlier: that only half of the Canada pension survivor's benefits be considered because the workers paid for half and the employers paid for half. Is that not correct? A 50-50 split?

Mr. Chairman: It is, yes.

11:40 a.m.

Mr. Laughren: So the workers paid for half, and the employers paid for half.

If you want to argue that, since the employers are the ones who pay for the compensation system--which they are--then you can have some kind of consistency in your argument that only half of the Canada pension survivor benefits would be deducted from the average earnings. To say that both are, both the deceased worker's contributions and the employer's contributions, is not fair. That simply is not fair.

There is some consistency in arguing that the employers have paid that through the deduction system. It is absolutely not fair, and illogical, to use 100 per cent of survivor's benefits, to deduct that from the average earnings when you compute those. I

would hope it would not become a legal question, about whether or not you have jurisdiction to do that.

I will tell you, I would be very unhappy if I was responsible for the federal legislation and I saw a provincial government muscling in and reducing its obligations to the survivors of workers killed on the job. I think it is really unfair. I think it is smarmy--I do not know if that is a legal word or not--but it really is smarmy that you would look that way to reduce the obligations to the board, and cut the survivor's benefits. I guess the thinking behind it came from Paul Weiler.

I would set one proviso on my argument: if you people would agree that we should have one comprehensive social insurance scheme in Ontario, I would agree with you, but we should not have these different layers of benefits to the spouses. As long as you are determined to proceed with this hotch-potch of benefits, then you have to live with it.

It is not my plan, not my scheme, it is yours. You want this shemuzzle of benefits, not me. I want a comprehensive system where you do not have this kind of stacking going on.

As long as you are determined to proceed with the existing system, then it is not fair for you to decide that this little portion of it is going to be like the comprehensive model, where you have one decent level of pension for people, whether they are injured themselves, or whether it is their spouses. As long as you persist, you have no right to muck around--"muck" comes from the same dictionary as "smarmy"--with Canada pension benefits.

I am wondering whether or not over the summer just a smidgen of wisdom has settled in on the ministry and the Workers' Compensation Board. Has it or has it not?

Mr. Chairman: Perhaps the minister can respond to all questions at one time.

Mr. Sweeney: I want to say that I completely agree with what has just been said. We made it very clear earlier that we do not believe these deductions should take place. The argument is that until such time as the provincial and Canadian federal government co-ordinate their various assistance plans into one overall plan which covers everybody, I do not think we have any justification at all for fiddling around with the system, such as we are doing here.

Mr. Laughren: Are you talking about a comprehensive system?

Mr. Sweeney: I concur that if we had a system covering everyone in all circumstances, stacking would not make sense. I agree with that. At the present, we do not have it. We have distinct systems for specific, distinct purposes, and they are funded in different ways.

To cut the loaf of bread the way in which this is suggesting and the way in which it has been in other situations with respect

to the Canada pension plan is just unfair. I concur with that entire principle, and our members cannot support this particular section, or any section with respect to CPP stacking.

Mr. Lupusella: I said we are going to pursue this debate, not for the sake of convincing the members, because it appears their position is quite clear, but through the course of the public hearings I thought for a moment the public presentations had changed the position and legislative course taken by the government.

As politicians, we forget quite easily the position that has been taken by all the injured workers who have appeared before this committee, the position taken by the trade union movement--I know they are not your allies although maybe some are--which is fundamentally against deducting the Canada pension plan from the total package of benefits that injured workers are entitled to receive.

I do not call it a "deduction," because in analysing the process, in clear terms we are giving authority to the board to steal money from injured workers. Even though we do not like the word "steal," that is what it is. When we use the words "penalizing injured workers," we do not like the words "penalizing injured workers." The evidence is clear that, as a result of this subsection, the board now has a clear mandate to steal money from injured workers. It is as simple as that.

If the employers who appeared before us really gave great consideration to what the board was going to do, I am sure they would be against it as well, because the board is appropriating money that the employer is giving to a regular worker. As Mr. Laughren said, I do not think that process is fair and just. Why are we forgetting the general and vivid position expressed to us during the summer, and even in previous presentations two or three years ago when this committee initiated the task of reviewing Professor Weiler's recommendations?

By way of history if nothing else, because I think my mandate to convince the government and change its mind is going to be lost, this committee and in particular the government members rejected in principle the full recommendations made by Professor Weiler. Professor Weiler noticed there were loopholes in the system and the system was becoming unfair to injured workers. He came out with the figure of 250 per cent of the worker's earnings and we cut it to 175 per cent in our committee deliberations. We are not giving what Professor Weiler suggested in the first place. The people who should be blamed are the Tory members. It is the policy of the government not to give something that is fair and just.

11:50 a.m.

Getting to the core of this subsection, I would have understood deducting it even though I disagreed--and I do not want to use the other word because it will displease the ministry and the members--if the government had given 250 per cent of the workers' earnings instead of cutting or chopping that figure. We

chopped that figure. We placed a limit of \$31,500 as the maximum ceiling and now we are faced with the deduction of the CPP.

If we want to use our sense of reason, if we had accepted and endorsed the principle of Professor Weiler and his figures, then I would have justified this deduction even though I would have disagreed. But by making such deductions for CPP in calculating the average earnings of deceased workers, we are penalizing people further.

Who are the people who will be penalized most? They are the ones I talked about on a different section. For example, people who will be faced with a gross income of \$10,000 will be the losers. This deduction is in line with the present policy of the board to bar injured workers from receiving supplementary pensions if they apply for CPP and to exclude them from receiving supplementary pensions and training courses if they apply for CPP.

Strangely enough, it is also the position of the board to suggest and advise injured workers to apply for CPP. Why? Because there is a saving position from the board's perspective, there will be less involvement of rehabilitation officers on the injured worker's case, the rehabilitation file is going to be closed, no training process will be implemented and so on.

We are talking about how injured workers are penalized by the present system if they apply for CPP. Is the system fair and just? It is not. Even though we disagree with a lot of things that have been expressed by Professor Weiler, such a deduction combined with further chops which the government gave to Professor Weiler's figures is an extra penalization process that is implemented against injured workers across Ontario.

Neither the mood nor the number of injured workers in front of Queen's Park, and lately at the Macdonald Block, had the power to change the government's policy and the members' position. We appreciate the course of action taken by the Liberals, but I do not think I will ever excuse or justify the position and policy undertaken by the government if it does not feel moved to improve the benefits for deceased workers. As my colleague stated, we are also penalizing families who have lost their breadwinner by deducting CPP payments in the calculation of average earnings.

Very clearly, there is something completely wrong with the government. I do not think it is just a matter of policy. It is a matter of political philosophy which is implemented within the spirit, the principle and the framework of the bill. I am really upset.

At this point, I do not know what kind of argument I have to use to make the government change its mind. We approached the task of this committee with the minister taking the position that he was going to have and use an open mind in the course of clause-by-clause debate. I have to wonder at this point how open the minister's mind was to understanding the problems of injured workers, with the few amendments that have been suggested in his opening statement, before analysing the content of the clause-by-clause debate on Bill 101. I do not think he came with

such intentions because, if there is something felt by injured workers across Ontario, it is such deduction for CPP.

The other point which should be emphasized is that through the course of history of the WCB, injured workers have been penalized under such particular clauses. Let me tell you how they have been penalized within the present act.

If you recall, in 1975 there was the so-called--if I can use this expression--introduction of major changes within the framework of the WCB in Ontario, not by the free will of the government, but because of the pressure used by injured workers who had been demonstrating constantly in front of Queen's Park. Such a process was embarrassing the government at that time.

I remember that when Mr. Davis went to Italy, for example, at the international airport there was a major demonstration, and when he came back from Italy, he was faced with several demonstrations and a picket line in front of Queen's Park, and 1975 was the year of an election as well. As a result of this type of pressure, the government decided to change certain things within the Workers' Compensation Act.

Before 1975, if you recall, there was no specific recommendation to give benefits to injured workers if a specialist or a family doctor was saying the injured worker could do light jobs. In 1975 there was an inclusion of a particular section of the act so that, if the injured worker was co-operating with the rehabilitation department and the board, he could have full compensation.

Before 1975, with just a specific or clear sentence coming from a specialist identifying that an injured worker who was receiving full compensation could do light jobs, his benefits were cut off or reduced to 50 per cent. If the injured worker then was applying for CPP, when the new change was implemented within the act, he was declaring himself totally disabled, which meant he was not available to go and look for light jobs and he was not co-operating with the rehabilitation department. This type of injured worker has been penalized and has seen his benefits reduced to 50 per cent.

Even though dialogue is continuing and they are saying they should not be penalized, and we have the minister's assurance that there is discussion taking place between his ministry and the WCB, I think that CPP has been a bar to make sure injured workers would not receive further benefits from the board. Now the CPP is implemented to penalize the people who need the money most, survivor spouses and so on.

The whole process will not please injured workers across Ontario, will not please us and will not please the Liberals. I am quite happy that the Liberals are defending and taking the same position we are taking today and have in the past.

12 noon

There is one way to change the government's position. I know

I will not be able to convince the members to vote against such particular clause. I have some resentment, too, concerning the minister's position. He came with an open mind to listen to the debates and to the concerns that have been expressed by injured workers through the course of the public hearings; and if there was something that injured workers really felt, it was the position to delete completely subsection 36(13).

I can debate for hours and hours, but maybe Floyd has something else to add to my remarks.

Mr. J. M. Johnson: Mr. Chairman, I would like to make a couple of comments and maybe get some clarification. I might say that about 20 minutes ago I was very supportive of this, but after the last 20 minutes of debate I am not so supportive.

Mr. Laughren: Sure, Jack. When I see you vote for something progressive, there will be two moons in the sky.

Mr. J. M. Johnson: You talk so long that one loses track of what you started with.

If CPP is taken into consideration, what about private insurance?

Mr. Sweeney: No, it is not covered.

Mr. Gillies: No, it is not. The difference, as I understand it, is that most private schemes that would kick in in a case like this are already incremental or top-up.

Mr. Laughren: Already what?

Mr. Gillies: They are incremental or top-up. They make up a certain percentage above and beyond what the government pensions are paying in.

With respect to the government offsetting those, there is a real problem because it would be very difficult administratively for the government to have access to the claims and the files of all those insurance companies and all the recipients, whereas the information on government schemes is quite readily available to the WCB; so the private schemes are not covered.

Mr. J. M. Johnson: I am not suggesting they be considered; I was just wondering about the relationship between the two.

What is the minister's rationale for not accepting the amendment as proposed?

Mr. Chairman: I am glad you asked that question. I think we would like the ministry to make a response to that because this is what the discussion has been about.

Mr. Laughren: I have some more questions like that and I do not care when I ask them.

Mr. Chairman: If you have more questions, perhaps they could all be responded to at one time.

Mr. Gillies: Mr. Chairman, I have listened very carefully to the various arguments that have been made. The minister has not at this time decided to accept the amendment.

I do not accept some of the arguments that were made by the members that what we are doing in this bill is punitive, is mean or does not represent a tremendous advance in workers' compensation. We are talking in Bill 101--and I am just replying to your general philosophical comments first, if I might--about an increase in the costs of this system and in the benefits flowing out to injured workers of \$170 million a year, starting in the first year. We are talking about \$22 million more, the five per cent increase, this year, and \$12 million more for the changes to the rehab section. I could go on--\$25 million a year on the survivors' features and so on.

Mr. Laughren: Reduce the accident rate. You are always using that argument.

Mr. Gillies: You are right; we should reduce the accident rate. I am not throwing these numbers out as something that is bad; I am not saying it is awful that there are increased costs. I am saying we are considerably enriching the overall scheme and it will benefit many injured workers.

In this subsection we are talking about CPP offset specifically on survivors. I did not hear either of my friends over here mention the greatly enriched lump sums for the first time, lump sum payments of \$20,000 to \$60,000. I did not hear that mentioned once, and that has to be seen as a tremendous advance for the people who find themselves in this very tragic situation.

As I understand it, with regard specifically to the Canada pension plan, the government's position is that the goal of workers' compensation is to ensure that after an injury an adequate level of compensation is maintained, an adequate replacement income, if you will. In achieving that 90 per cent net figure, the government's position has been to include and take into account the receipt of other government pensions such as the Canada pension plan.

Mr. Lupusella: So why are you using the 90 per cent figure when, as a result of this deduction for CPP, it is not 90 per cent any more? It might come down to 70 per cent.

Mr. Gillies: In terms of the one scheme, but the end result is the same.

Mr. Lupusella: But in other sections you are using the figure of 90 per cent. With the deduction for CPP, we might even go down to 70 per cent.

Mr. Gillies: But the goal, what the injured worker's beneficiaries are left with when you include the offset, is to bring them to 90 per cent regardless of the source of funding from the public scheme.

Mr. Lupusella: Then you deduct the CPP from that amount. After calculating 90 per cent of the net average earnings, you start the deduction for CPP if the people are eligible for that. So the 90 per cent figure is not 90 per cent any more; it might be 70 per cent or even less.

Mr. Gillies: The point is that regardless of the source, be it from CPP or WCB, the philosophy is that the family be left with an adequate and proper replacement income.

Mr. Lupusella: You are stealing their money.

Mr. Laughren: Paid by whom?

Mr. Gillies: That will be achieved by a mix of the two schemes.

Mr. Laughren: The public sector.

Mr. Gillies: That is the philosophy. The practicality is that they will be left with an income, subject to the overall formula, that approximates the family income prior to the death.

Mr. Laughren: You are opening the door for the public sector to subsidize the private sector in compensation schemes.

Mr. Chairman: Are there any further questions?

Mr. Laughren: Yes, I have a couple of questions.

Let us assume for the moment that a worker is earning \$31,500 and that worker dies on the job. How will that worker's earnings be computed? Let us say, for argument's sake, the Canada pension was \$300 a month. Will \$300 be deducted from the \$31,500 in computing the earnings?

Mr. Cain: As I understand it, the CPP payment will be deducted from the \$31,500.

Mr. Laughren: Or 90 per cent of the \$31,500.

Mr. Cain: No, from the \$31,500.

Mr. Gillies: From the gross figure.

Mr. Laughren: What if the worker is earning \$36,000? Where will the Canada pension be deducted?

Mr. Gillies: The ceiling is still \$31,500. My interpretation would be that it is deducted from the ceiling figure, the gross figure.

Mr. Cain: I believe it is. I cannot be precise on that one. We tried to work it out to see what the situation was.

I just want to mention that the most beneficial place to reduce earnings is to put CPP against earnings, because it is not a dollar-for-dollar offset then.

Mr. Laughren: The 90 per cent?

Mr. Cain: No. It is even less than that. It depends on the amount of earnings. In some cases it is only 40 cents on the dollar. It is a varying amount; whereas if you put it up front and deducted it from the payment, it is a total offset. So it is not a 100 per cent offset. It varies.

Mr. Gillies: I am sorry, what I just said is wrong. The deduction is from the earnings regardless of whether they exceed \$31,500 or not. So if the worker makes \$36,000 and the CPP income over the course of the year is \$3,000, it has an effect on the ceiling. It would be \$3,000 from \$36,000, leaving one with \$33,000, subject to the \$31,500 maximum.

Mr. Laughren: Therefore, to follow that position through, the survivors of higher-income workers receive no penalty through this section; only people earning under \$31,500 do. Am I correct?

Mr. Gillies: That would seem to be the case under this.

12:10 p.m.

Mr. Cain: The one place that needs clarification is with the minimum.

Mr. Gillies: Let me give an answer to that. I think what you are saying is basically correct.

Mr. Laughren: Do you find that strange?

Mr. Gillies: Yes.

Mr. Sweeney: It does not make sense. Either the principle applies or it does not apply; it cannot apply in one case and not in another, in effect.

Mr. Laughren: And in inverse order to need.

Mr. Chairman: Would the person in that higher income bracket be eligible for CPP disability benefits?

Mr. Laughren: Yes. We are talking about survivor benefits now.

Mr. Chairman: Oh, survivor benefits. Right.

Mr. Laughren: That is one question that needs to be resolved. The other question is--maybe Mr. Cain can tell me this--how will you know that survivors are receiving CPP benefits? Will you assume?

Mr. Cain: No, we would ask, I would expect. That would seem to be the reasonable way. We would ask the survivor.

Mr. Laughren: You would ask the survivor?

Mr. Cain: Yes.

Mr. Laughren: I see. Would that be the same rule with people receiving total temporary benefits under a later section?

Mr. Cain: Yes. We would ask them.

Mr. Laughren: And the obligation on them would be to tell you the truth.

Mr. Cain: We expect people to tell us the truth.

Mr. Laughren: Even if they are counselled to do otherwise?

Mr. Cain: I have to reiterate that statement. We expect them to tell the truth. We are not assuming they are being counselled to do otherwise.

Mr. Laughren: I understand.

Mr. Gillies: I cannot imagine that anyone would do that.

Mr. Laughren: I can. Tell me, is it not a fact that the Canada pension people actually have an office in some WCB offices, in rehab departments and so forth?

Mr. Cain: I am certainly not aware of it. I will not deny it, because I honestly do not know. I am not aware of it. I have never heard of it.

Mr. Laughren: One or two days a week? You have never heard of that?

Mr. Cain: I do not think so.

Mr. Laughren: I am not saying it is a fact, but I have been told the Canada pension people come and plunk themselves down in the WCB rehab department and do their thing one, two or three days a week.

Mr. Cain: I will say emphatically that we get no information from them, because we always ask the injured worker, "Are you receiving CPP benefits?"

Mr. Laughren: Okay. It would be interesting to know that, would it not? It would be a strange kind of relationship, if it were true, between a federal government department and the Worker's Compensation Board. I would think it would be totally inappropriate.

Mr. Cain: I am just not aware of it.

Mr. Gillies: We can find that out.

Mr. Laughren: Under clause 44(b), was it?

Mr. Chairman: Of the bill?

Mr. Laughren: Yes. The CPP premiums are also deducted when computing net average earnings. Right?

Mr. Gillies: Yes.

Mr. Laughren: So not only do you deduct the premiums paid, but you also deduct the benefits when they get them. I have heard of double jeopardy in my day, but how do you justify that? How can you do both? Do you not think it is a bit much to stick it to them twice?

I know you are not an advocate, Mr. Cain. You are here only to be dispassionate and objective and give us the policy of the board, but how can you say--I am glad the up and coming young member for Brantford (Mr. Gillies) has returned.

Mr. Gillies: I am sorry about that. I had an urgent call.

Mr. Laughren: That is all right. What we are discussing is the fact that in a later section of the bill, Canada pension premiums are deducted to determine the worker's net average earnings, along with income tax and unemployment insurance premiums. I wonder whether you do not regard that as--I do not know what the correct "loco" would be. It would probably be something like consanguinity, some word that would describe what I regard as double jeopardy that says--I have had enough of that legal word; there must be a Latin phrase for that--you deduct the premiums in terms of their average earnings, and then when benefits are received, you deduct the benefits, both in the case of survivors and in the case of temporary benefits for workers. I wonder how you justify that. Do you think that is fair?

Mr. Gillies: I follow what you are saying. All I would say is that it is no different from the other deductions. We also deduct the unemployment insurance premiums. We also deduct income tax, which leads to the establishment of any other number of other government services that in turn may have a cost back to the person paying.

Mr. Laughren: But it is a different principle here.

Mr. Gillies: Somewhat.

Mr. Laughren: I would say somewhat. I think perhaps we need to rehone the fine legal minds that drafted this. Maybe we should send them back to law school; no, on second thought they have had enough damage done to them. There is something wrong with what you are doing here.

Mr. Chairman: I wonder if that stimulates a bit of work for the parliamentary assistant to deal with over the noon hour--

Mr. Laughren: Not likely.

Mr. Chairman: --and come back with an answer. There are a couple of questions there that certainly have to be answered. We can knock off now and come back at 1:15 p.m. and try to get through this.

Mr. Laughren: I have a little trip to make. I cannot be back by 1:15 p.m.

Mr. Chairman: We were deciding informally--nothing on the record--to cut our noon break to an hour and leave about three hours this afternoon.

Mr. Laughren: I may be a few minutes late.

The committee recessed at 12:17 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT
WORKERS' COMPENSATION AMENDMENT ACT
FRIDAY, SEPTEMBER 7, 1984
Afternoon sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)
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Havrot, E. M. (Timiskaming PC)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Kennedy, R. D. (Mississauga South PC)
Laughren, F. (Nickel Belt NDP)
Lupusella, A. (Dovercourt NDP)
Mancini, R. (Essex South L)
Riddell, J. K. (Huron-Middlesex L)
Sweeney, J. (Kitchener-Wilmot L)
Yakabuski, P. J. (Renfrew South PC)

Substitutions:

Hennessy, M. (Fort William PC) for Mr. Kennedy
Kolyn, A. (Lakeshore PC) for Mr. Villeneuve
MacQuarrie, R. W. (Carleton East PC) for Mr. Yakabuski

Also taking part:

Gillies, P. A. (Brantford PC), Parliamentary Assistant to the
Minister of Labour

Clerk pro tem: Carrozza, F.

Staff: Revell, D., Legislative Counsel

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation
Board
Hess, P. A., Director, Legal Services Branch
Welton, I., Senior Liaison Officer, Policy Secretariat, Program
Analysis and Implementation

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Friday, September 7, 1984

The committee resumed at 1:29 p.m. in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT
(continued)

Resuming consideration of Bill 101, An Act to amend the Workers' Compensation Act.

Mr. Chairman: I wonder if Mr. Gillies received any of the answers he was trying to get.

Mr. Lupusella: He will tell us an answer.

Mr. Laughren: The question is, whom did he talk to last?

Mr. Havrot: He talked to me last.

Mr. Laughren: Then he probably has nothing to say.

Mr. Havrot: That is right.

Mr. Gillies: I do not have all the information I wanted yet. Some of it is still coming from the ministry.

On Mr. Laughren's point about the Canada pension plan offset at the high end of the scale--I am just thinking about your point, Floyd, on the CPP offset applying to those, but not at the very high end. If the ceiling plus the CPP offset is less than the income, then they are not affected.

I think that is a valid point, but I remind you--and we did discuss this a bit earlier--that this also applies at the low end of the scale. If the family income is less than \$10,500, the CPP offset does not apply either. The people with the most modest incomes are not affected by the offset.

Mr. Laughren: You have only screwed all the people in between.

Mr. Gillies: Yes. Those are mainly the people in that middle group. But there is a rationale for that, and I am going to ask Mr. Cain to enlarge on it for us.

Mr. Lupusella: If I may, can we spell out this principle in the act, just for the sake of clarification? Again, the board might use it even with people below \$10,500.

Mr. Gillies: Oh no, they cannot. Let us find the appropriate section of the act. They just cannot do that, Tony.

Mr. Cain: Page 12, subsection 42(4): "The minimum amount of compensation to which a spouse and child or children of a

deceased worker are entitled under subsection 36(2) shall be \$10,500 per annum." Therefore, one cannot reduce that amount by the CPP or anything else.

I do acknowledge, though, in subsection 42(5), which refers to section 36(3)--because there are no children, or after the children have passed age 19--that where the spouse gets some percentage less than 90 per cent of net, you multiply \$10,500 by that multiple, whatever it may be, to determine what she is entitled to. However, a spouse with children or a child cannot receive less than \$10,500 per annum if the deceased's earnings were that amount or less.

Mr. Sweeney: In other words, the \$10,500 is not affected by the 90 per cent?

Mr. Cain: That is correct.

Mr. Lupusella: There is another principle that needs further clarification, just for myself. Under subsection 36(13), which deals with the reduction for CPP, you previously mentioned that the calculation of the average earnings of a deceased worker will consider the total package of the pension at the time when the spouse will get such a pension. Am I correct? Or is it a deduction from the calculation of the average earnings on the contributions that were made by the employer and the employee to the CPP plan?

That is what I do not understand. What will the board do for the calculation of the average earnings? Does the board consider the total amount of Canada pension when it is granted, or is it the amount the employer and employee had been contributing before the worker died?

Mr. Cain: Are you referring to subsection 36(13) on page 10, the particular CPP benefit we are describing there?

Mr. Lupusella: On page 10. It is not clear.

Mr. Cain: Whatever the amount of that CPP payment is--

Mr. Lupusella: So it is the clear pension?

Mr. Cain: --it will be deducted from the gross earnings of the deceased.

Mr. Lupusella: So it is the pension per se that will be deducted.

Mr. Cain: That is right.

Mr. Lupusella: So if the pension to which the spouse and children are entitled is \$400 per month, and the total package sometimes even reaches \$5,000--

Mr. Cain: I see. The CPP payment.

Mr. Lupusella: CPP alone. The \$5,000 will be deducted on the calculation of the average earnings of a deceased worker. It

is not the contribution per se; it is the pension plus the benefits for each dependent child.

Mr. Cain: It is the actual benefit payment that will be deducted, but it will be deducted from gross earnings.

Mr. Lupusella: What a disaster. It is stealing money. Stealing money is the clear definition of such a subsection.

Mr. Sweeney: In other words, the CPP pension is considered in lieu of actual earnings.

Mr. Cain: That is correct. But by applying it to the gross earnings, it is a taxable amount of money, as were the earnings. At least it is being levied against something that is taxable the same as it itself is. But second, and more important, it does not create a dollar-for-dollar offset. I am not sure of the precise amounts, but I can recall when they were calculated, they were something like 40 cents on the dollar or 60 cents on the dollar.

Mr. Laughren: Could I have a clarification on that? I think Mr. Lupusella understands it better than I do.

What you are saying is that the Canada pension reduces the gross earnings down to a net level, from which are subtracted those three deductions. Am I right so far?

Mr. Sweeney: No. It reduces the gross level, not the net level.

Mr. Laughren: I thought that was what I said. It reduces the gross level--

Mr. Cain: To a new gross, you might say.

Mr. Laughren: To a new gross.

Mr. Gillies: (Inaudible) deductions to get your net.

Mr. Laughren: And then the 90 per cent is taken of that new net.

Mr. Welton: (Inaudible) adjusted gross.

Mr. Laughren: I will go through it once more so it is clear in my head. You start out with a gross. You deduct the CPP to get a new gross. From that new gross you subtract which first? The 90 per cent?

Mr. Welton: No. You deduct the deductions.

Mr. Laughren: You are still not down to net. You take 90 per cent--

Mr. Welton: It is net; then you take 90 per cent of the net.

Mr. Laughren: First of all, there is CPP, then there are the deductions and then there is the 90 per cent. What would that be of the gross? Let us use a nice, easy figure. Forgive me if this is all clear to you; it is not to me.

For argument's sake, let us say you have a figure of \$30,000 for gross income. The person's CPP, for argument's sake, is \$3,000; you deduct that and you are down to \$27,000. From that must be deducted the deductions. What would be a ball-park figure for the deductions, in easy numbers? You are down to \$27,000.

Mr. Welton: The tax would be just over \$5,200, I would think. That is for a single person. What do you want to take as an example?

Mr. Laughren: Let us say single. Would \$6,000 be fair?

Mr. Welton: No, \$5,500 would be closer.

Mr. Laughren: We deduct the \$5,500 for deductions, which brings it down to \$21,500.

Mr. Welton: That is the tax only, by the way. You have the CPP and UIC.

Mr. Laughren: So maybe \$6,000 would be a fair figure.

Mr. Welton: Yes.

Mr. Laughren: Let us go to \$6,000. That leaves us \$21,000. From that we take 90 per cent.

Mr. Welton: Right.

Mr. Laughren: Ninety per cent of \$21,000 is around \$19,000. Here we have a worker who goes from \$30,000 down to \$19,000, and that is 90 per cent of net.

Mr. Welton: Yes, but he goes from \$30,000 gross to \$19,000 net. He was not taking home \$30,000.

Mr. Laughren: No.

Mr. Gillies: He is taking home about 90 per cent of what he was taking home.

Mr. Laughren: No, no. Let us be precise. Before, he was taking home \$21,000 plus \$3,000--he was taking home \$24,000, because of CPP.

Mr. Welton: No, he was not taking that home before. He was not getting the CPP before.

Mr. Laughren: He would be.

Mr. Welton: What do you mean, he would be? He is only getting the CPP because of the accident. He would not be getting the CPP otherwise. That is the reason for doing it this way.

Mr. Laughren: Yes, of course. That is true.

Mr. Sweeney: It is theoretically possible for him to end up with as many or more total dollars on the table after as before.

1:40 p.m.

Mr. Welton: Yes. If he did not deduct CPP, it is possible that somebody would be taking home more afterwards than before because they are getting two different pensions.

Mr. Sweeney: By reducing the \$30,000 to \$27,000 by the \$3,000, you are also reducing the level at which tax is taken.

Mr. Welton: Yes. That is why it is another dollar offset (inaudible).

Mr. Sweeney: So that \$3,000 is worth more, the same as our expense thing.

Mr. Lupusella: The other logical question is, why were employers screaming or yelling about the proposed legislative bill that increases the ceiling to \$31,500? In fact, we are not dealing with this ceiling, taking into consideration all the deductions that will take place. Why did they scream? Did they have a reason scream about the ceiling?

Mr. Gillies: It is higher than it was; that is the point, Tony.

Interjections.

Mr. Welton: Somebody who was making \$35,000 or \$40,000, irrespective of whether or not he was getting CPP, will still be getting the new benefits based on the ceiling.

Mr. Lupusella: Why did they not attack the government on that? They attacked the workers, saying they do not deserve such a high ceiling.

Mr. Chairman: I do not recall them saying anything about the workers. Certainly the intention--

Mr. Lupusella: They were saying it was too high; it was not appropriate to give a high ceiling to the workers at this time based on the economic circumstances of this province.

Mr. Chairman: That is right. Do not forget the employers will be paying higher premiums for \$25,000 to \$30,000, \$5,000 to \$6,000 more. If they are paying at an \$8 per \$100 rate, that is \$80 per \$1,000 for every employee multiplied by \$5,000. They are going to be paying an awful lot more to those employees.

Mr. Lupusella: (Inaudible) attack the government policy, not the workers.

Mr. Chairman: They attack the committee.

Mr. Lupusella: Let us analyse the situation further. On top of that, the federal government is telling people receiving CPP that at the end of the year they have to pay income tax. Am I correct? It is true, so we are told. We are talking about stealing money in the first place and a penalization item incorporated in that process, plus extra penalization at the end of the year, when people are supposed to fill out their income tax form, because they have to declare the CPP income and they are supposed to pay money to the federal government.

Is that the way our injured workers are supposed to be treated as a result of this clause?

Mr. Welton: They would pay tax if their income were high enough to be taxable. I do not know whether CPP alone, as the only item of taxable income, would mean they pay taxes.

Mr. Lupusella: You are forgetting that a surviving spouse eventually is working in the labour market making money as well.

Mr. Welton: If she was working, sure.

Mr. Lupusella: You are talking about surviving spouses who would stay at home looking after young children. Eventually they have to depart to the labour force because they are unable to look after the family. In the majority of cases, I think people will be working, and they will have to pay taxes on the CPP to the federal government at the end of the year; so we are talking about penalizing survivors in different ways.

Mr. Welton: The objective of the whole thing, though, surely is to try to approximate what the person is losing; otherwise, you take the income as it was before the accident and you compare it with afterwards. Afterwards there are two items in the income instead of just one. One is CPP if it is payable in that situation, and the other is what is received from the workers' compensation. If you do not take it into account, you are overcompensated, if you want to put it in that sense.

Mr. Lupusella: We are talking about a more generous WCB system. It is nice to use the figure of \$31,500 as the new ceiling which would be set up as a result of Bill 101, in fact the new ceiling as a result of CPP will be lower by \$5,000 or \$6,000. It is with the calculation of 90 per cent of net. Why not?

Mr. Laughren: Who would get \$31,500 as the ceiling?

Mr. Welton: If you want to take somebody who has a CPP offset and use your \$3,000 CPP figure, somebody who was making \$34,000.

Mr. Lupusella: They are all receiving CPP, unless you are talking about an immigrant who came to Canada last year, is working on a construction site this year and is killed. Then his wife or a young person is not eligible for CPP because he did not have enough contributions.

Mr. Welton: It will not be deducted in that case. It is still a \$31,500 ceiling.

Mr. Lupusella: Okay, but you are saying that the deduction has not taken place. In the majority of cases such a deduction does take place because the survivor's spouse would automatically receive CPP.

Mr. Laughren: Maybe in every case where the bill uses the number "\$31,500" you should put in front of it "in rare cases."

Mr. Welton: They are rare anyway in the sense that most people earn less than \$31,500. I do not understand your point. You are eligible for the \$31,500 only if you make that much money in the first place.

Mr. Laughren: Yes, but the average industrial wage is over \$20,000. Right?

Mr. Welton: Yes, just over.

Mr. Laughren: So there are lots of people in the high risk industries in that higher scale.

Mr. Cain: But when they earn more than \$31,500, as you said--let us say they earn \$35,000, just to get it above it--and then you have the CPP offset at \$3,000, that person is still starting off at \$31,500 because the CPP offset was applied to earnings beyond the maximum, and then we went to the maximum; so they are not even affected by it.

Mr. Laughren: The only people who really have the \$31,500 ceiling would be who?

Mr. Welton: People who earn more than that; if you want to use your example of the CPP, after that first step is taken, those who earn \$31,500 on the dot. If they do not get CPP, it will be everybody earning \$31,500 or above. That will be reduced by the number who earn that much and whose CPP deduction takes them below \$31,500. I do not know how many people that is, but it is not a lot of people.

Mr. Laughren: So they have a different ceiling, do they not?

Mr. Welton: Anybody who earns less than \$31,500 has a different ceiling, if you want to put it that way. When you are talking about the ceiling, nobody is saying that everybody gets benefits based on \$31,500; it depends on what your income is. Your ceiling is your own income, if you like, with the WCB, but for anybody earning more than \$31,500, it is \$31,500.

Mr. Laughren: Except that the \$31,500 was put in so nobody would pierce that ceiling; that is the purpose of the ceiling. What you have done now is to allow certain people to pierce that ceiling.

Mr. Welton: In what respect?

Mr. Laughren: People earning up to \$34,500.

Mr. Welton: No, they do not pierce it.

Mr. Laughren: That is their new ceiling with CPP: \$34,500, using my example of \$3,000.

Mr. Cain: One is simply saying that the act says CPP has to be deducted from earnings; so we are deducting it from the earnings, whatever they may be.

Mr. Laughren: I understand that, but those people have a ceiling of \$34,500. A select group of people has a higher ceiling than others.

Mr. Welton: That is a misnomer. That is not their ceiling; their ceiling is still \$31,500. The ceiling is surely what your maximum benefits are based on, and their maximum benefits will be based on--

Mr. Laughren: No, you are deducting CPP from that different ceiling.

Mr. Welton: That is not a ceiling; that is their earnings.

Mr. Laughren: Okay, then do not call it a ceiling.

Mr. Welton: We are not calling it a ceiling.

Mr. Gillies: Floyd, would you rather it be deducted from the ceiling figure than from the income?

Mr. Laughren: No.

Mr. Sweeney: It would be fairer, but we would rather you did not do it.

Mr. Chairman: Have we had enough discussion on this?

Mr. Laughren: No. For one thing, my question has not been answered on the deduction of premiums.

Mr. Gillies: Frankly, I would like to give you a full and proper answer on that on Monday, if I might. I could not get an answer that I was happy with over lunch.

Mr. Laughren: Perhaps we should stand this section down and have another debate on it on Monday? Is that what you are suggesting?

Mr. Gillies: Yes.

Mr. Chairman: No, I think he is suggesting he will come back with an answer and then we will vote on it.

Mr. Laughren: Wait a minute now.

Mr. Chairman: No, I am not saying you are going to have to agree with the answer; I am not suggesting that for a moment.

1:50 p.m.

Mr. Laughren: No, but then we can debate his answer. What kind of a ruling is that?

Mr. Chairman: It was not a ruling; it was just a suggestion. It is the way I understood your question.

Mr. Laughren: Oh, my!

Mr. Chairman: It looks as if we will have to stand that down until we have an answer to it. Time marches on.

Mr. Sweeney: Let us finish these two and then we can deal with the amendments Mr. Lupusella brought us.

Mr. Lupusella: Section 36(14) says: "A person who ceased to be a spouse by reason of living separate and apart from the deceased worker at the time of the worker's death is entitled to compensation under this section as a spouse where the worker was or would have been required had the worker not died to make support, maintenance or alimony payments under a separation agreement or judicial order."

Mr. Chairman: Is that understood? Are there any questions on that item?

Mr. Sweeney: In other words, the compensation payments will continue in proportion to some of the earlier clauses on the financial requirements.

Mr. Revell: I am not sure we are talking to the right point here. I believe what this subsection does is to catch the possibility that a person who normally would be considered a spouse is not. The definition of spouse--

Mr. Sweeney: Does it not say that in a separation situation at the time of death--

Mr. Revell: He is not a spouse as far as this act is concerned. By definition, a person who at the time of the death was not living with the person to whom he or she was married is not a spouse. They are no longer cohabiting at the time of death, so by definition he or she is not a spouse. This one catches two situations. First, where there has been a recent separation, for example--

Mr. Sweeney: There is some kind of maintenance agreement.

Mr. Revell: --and there has been some sort of maintenance agreement, it will continue. There also is a possibility that there may be two spouses. A person has remarried and there is another person out there from whom he or she is divorced--let us not call them two spouses, but one spouse and one person entitled to maintenance. This section, when combined with subsection 36(15), catches the problem of continuing benefits.

Mr. Sweeney: How is the maximum amount spread around then?

Mr. Revell: I think that is an issue the board's representatives should be addressing.

Mr. Sweeney: It would seem that the existing spouse is entitled to the provisions of subsection 36(1) or subsection 36(2), as the case may be. Then you have a second, former spouse who is entitled to continuing maintenance payments.

Mr. Cain: That is subsection 36(15) you are referring to.

Mr. Revell: You have to read the two sections together.

Mr. Sweeney: Perhaps we had better read subsection 36(15) because I am having difficulty in understanding subsection 36(14) in isolation.

Mr. Lupusella: It says: "Where, because of the operation of subsection 14, there is more than one person entitled to receive compensation under this section as a spouse, the board may in its discretion apportion the payments under this section between them and, where this subsection applies, the maximum amount payable by way of lump sum shall not exceed a maximum of \$60,000 and the maximum amount payable by way of periodic payments shall not exceed 90 per cent of the net average earnings of the deceased worker at the time of death."

Mr. Sweeney: The assumption is that while the worker was living, whatever his or her income was, technically it was distributed between two families.

Mr. Revell: I believe that is the very issue that perhaps Mr. Cain should be confirming, rather than--

Mr. Gillies: I think I can state the three things that arise out of these subsections 36(14) and 36(15) reasonably succinctly. If a worker dies while he is separated from his or her spouse, and this worker was required to make alimony support or maintenance payments as part of that separation, then the separated spouse is entitled to benefits under the act.

If a worker has more than one surviving spouse--let us say there is one with whom the worker was cohabiting and another one from whom he was separated--then the maximum benefits for which the spouses are eligible would be the 90 per cent of the deceased worker's pre-injury earnings, and they are apportioned as the board directs.

Mr. Sweeney: Those maximum benefits are eligible jointly. It is not that each one of them is eligible; two or three of them together are eligible.

Mr. Gillies: Jointly, and they are apportioned as the board directs, subject to the usual appeal procedures.

Mr. Sweeney: What are the limitations in subsection

36(14)? Are they the same as defined in the previous subsections, or is there a different kind of limitation in subsection 14?

Mr. Gillies: I will have Mr. Cain speak to that. My understanding would be that it is subject to the splitting, and the board's--

Mr. Sweeney: I can understand the split in subsection 36(15). That makes sense to me. Let us go back to subsection 14.

We assume that under subsection 14 there is no current spouse. Let us assume that we have a separation situation with maintenance payments. How do we decide what that separated spouse is entitled to? I realize that it obviously cannot be more than whatever the maintenance agreement was, but what if the maintenance agreement was higher? What is the limit?

Mr. Cain: Based on that section, one simply goes back to the previous subsections of this section and applies the amounts of money as directed. Therefore, the spouse could well get 90 per cent of net if there are children, or, if it is a woman 40 years of age with no children, she would be entitled to a 40 per cent pension, plus a \$40,000 lump sum--precisely the benefits that a spouse cohabiting at the time of death would receive.

Mr. Sweeney: Yes, but it looks to me--and maybe I am misunderstanding it--as if subsection 14 would not permit payments from the compensation board that would be any higher than what the separation agreement had allocated. You seem to say that this is not so.

Mr. Cain: The section reads: "A person who ceased to be a spouse by reason of living separate and apart from the deceased worker at the time of the worker's death is entitled to compensation under this section as a spouse where the worker was or would have been required," and so on.

You go back and look at it. Under this section, the compensation for a spouse with children is 90 per cent; without children, there are varying percentages based on age and--

Mr. Sweeney: And whatever the support or maintenance agreements were really makes no difference.

Mr. Cain: No. That only establishes the relationship. That is the purpose of it.

Mr. Hess: I agree with Mr. Cain. I think the section is quite plain in that regard.

That last clause--"where the worker" and so on--is only a condition showing when the entitlement will occur. It does not limit in any way or have anything to do with the amount of compensation which is governed by what precedes.

A spouse is entitled to compensation as a spouse, and that carries you back to subsections 36(2) and 36(3). Whatever they provide is what she gets.

Mr. Sweeney: So the last couple of lines of subsection 36(14) simply tell us that the existence of a separation agreement or a judicial order triggers in the requirement.

Mr. Cain: It describes "dependency."

Mr. Sweeney: Yes, that is the dependency factor. If there were no such order or agreement, it would not be triggered in.

Mr. Cain: That is correct.

Mr. Sweeney: It would be assumed to be having no financial relationship.

Mr. Cain: That is correct.

Mr. Sweeney: And the amount of the agreement or the order are immaterial?

Mr. Cain: Correct.

Mr. Lupusella: Let us say that the deceased worker had a will, with instructions as to how to dispose of his income. Which is going to prevail, the legislative amendments or the will? How will the money of a deceased worker be disposed?

We might get into the type of situation where a deceased worker has a will involved. Why should the board go against the will of the deceased worker on how to dispose of the money?

2 p.m.

Mr. Hess: That is another question. All I am going to say about that is that the will would have nothing to do with the disposition of the compensation, which would be governed by this, because it is not the deceased worker's money to dispose of.

He is dead. The act makes it quite clear that it is for the benefit of the survivors, that is, the widow or widower as the case might be and the children. If the deceased worker tried to will it away from them and say, "I do not want them to have anything," or suppose he gave it all to found a home for cats or something like that, we would not pay any attention to it in any way, shape or form. The act here says this compensation money is for the benefit of certain people that it identifies, spouses, dependants and so on. The deceased worker cannot give it away.

Mr. Gillies: In a nutshell, legally it is not theirs to will. A continuing benefit from the WCB is not their real property.

Mr. Lupusella: I do not have a legal mind, but--

Mr. Gillies: Neither have I. I am surrounded by them.

Mr. Chairman: Are we ready to vote on those two items?

Mr. Lupusella: No, I have another question. On the maximum of \$60,000, is the age factor also applied to reach this amount under this subsection?

Mr. Cain: In subsection 15 the age factor is not applied at the \$60,000. It is stated here that when there is more than one spouse, where money has to be apportioned, you have up to a lump sum of \$60,000 to apportion and you take the \$60,000 and apportion it.

Mr. Lupusella: It is a clear-cut amount, without the involvement of other subsections to play with the total amount of money.

Mr. Laughren: I am confused now, just when I thought I had it all straight in my head.

Mr. Sweeney: It is a maximum.

Mr. Gillies: Yes. It is a maximum up to \$60,000.

Mr. Laughren: I need examples to understand these things. Suppose a man is killed on the job and he has a person with whom he is living, who is 20 years old, and an estranged wife who is 40. Let us be more realistic; it is the real world out there.

What happens then? Is there any age relationship to what those people get? There is under the lump sum.

Mr. Cain: I believe there could be an age relationship, but also another relationship that would have to be looked at, and at this point one would probably look at the amount of the payments being given to the other person with whom he does live, because you are trying to apportion the payment in a way that his wages were apportioned. In that sense, you are trying to balance it. I would suggest that maybe age would come in a little bit in terms of separating the lump sum between the two people, but then again perhaps the way the wages were separated.

Mr. Sweeney: How you are going to arrive at what the lump sum is if you have two different ages?

Mr. Lupusella: The policy will provide.

Mr. Sweeney: That does not help, seriously.

Mr. Gillies: I see your point.

Mr. Sweeney: Are you going to have \$20,000 to apportion, \$40,000 or \$60,000? The age of which spouse or former spouse determines the amount you have to apportion? It makes a big difference.

Mr. Laughren: I know what this is. This is a thinly disguised boondoggle for the lawyers to fight over and get all of it themselves as the two spouses, the former spouse and present spouse, sue each other for the larger sum. Boy, oh, boy, what a boondoggle. I do not know how you can leave it so up in the air like that, though. How are you going to do that?

Mr. Cain: The rationale is because of the different possibilities that exist.

Mr. Lupusella: Mr. Chairman, for the sake of clarification about Bill 101, I think the old act was lacking in new provisions and was so unclear that the policy came out with a bundle of new policies to clarify each section.

I think as a committee we can do a better job just to take into consideration different circumstances, which might even clarify the lawyers' minds because it is not clear to us what is going to happen. Then we have to rely on the board's policy, which is the last law that will be implemented.

I am not really ready to vote on subsection 36(15) unless we are going to spell out different principles which might clarify different situations. Why leave it to a lawyer, as Floyd just stated? We are legislators. We are above the lawyers.

Mr. Laughren: I am not sure this subsection is badly intentioned. I am not implying that. But I am confused as to what is going to happen the first time you have to implement it. I do not know the answer either.

Mr. Sweeney: If either one of them has children under 19, then the 90 per cent figure will automatically trigger in. I do not think that is a big problem. All you have to have is either one of the spouses to have children and the 90 figure will trigger in.

Where we do not know what will trigger in is the \$60,000 maximum. That is the one where we do not seem to have any idea at all as to which figure between 20 and 60 will trigger it, because we do not know what you are going to base it on.

Mr. Gillies: I just wonder if it has been left purposely a little vague. Can you imagine trying to put a formula in the bill for the number of different possible spouses and the different ages? I suppose there could be three or four ex-wives.

Mr. Laughren: You could have a weighted average.

Mr. Chairman: Trading in a 40-year-old for two 20s.

Interjections

Mr. Gillies: It really would be very difficult to put it right in the legislation.

Mr. Laughren: It may be even more difficult to implement.

Mr. Gillies: Could be. I just wonder if this is one of those rare cases where it might be better to leave it to the discretion of the board, subject to the usual appeals. I do not know if you have any idea, but how would you draft that?

Mr. Sweeney: It would seem to me that we can reword this slightly to ensure that none of those spouses would be disadvantaged because of her age--let us use a "her" in this case--compared with somebody else's age.

In other words, I have no problems about leaving the apportioning decision to the board. I do not know how else you could possibly do that. As you say, the combinations of the number of spouses and the age spreads literally are endless.

Surely there should be something in here which says that neither one of those spouses, or none of the three spouses--whatever the case may be--would in any way be disadvantaged with regard to what she should be entitled to because of the different age of somebody else.

In other words, it seems to me we should somehow give direction to the board through the legislation. That kind of thing could not happen. I am saying it poorly, but I am reaching--

Mr. Cain: Can I ask a question, as an example, to see what it might mean? If one were to think about age--and for the moment put aside what the maintenance allowance was and so forth--if you had a 30-year-old and a 50-year-old to whom you had to apportion it--

Mr. Sweeney: Right.

Mr. Cain: --this section has suggested that the older the spouse is, the less the lump sum, the younger, the higher, and then the other thing was reversed. In that case, would you want to apportion the \$60,000, giving the 30-year-old a greater portion of the lump sum than the 50-year-old, but when you apportion the 90 per cent, you will give the 50-year-old more of the 90 per cent than you will the 30-year-old?

Would you want to follow the principles of the section, everything else being equal, in doing it that way? I just ask that question because I do not know.

Mr. Sweeney: Let me try to partially answer by using your example of the 30-year-old and the 50-year-old. The 30-year-old, if there was only one spouse, would be entitled to a larger lump sum. Therefore, if you are going to give her a percentage of something, it should be a percentage of a larger figure.

The older person, who would be entitled to a smaller lump sum, should get a percentage of that smaller figure, so that the 30-year-old is not disadvantaged by the fact that the other spouse happens to be 50. It would seem to me that the percentages should work in reverse.

Mr. Cain: Yes.

2:10 p.m.

Mr. Sweeney: If you pick one figure, theoretically she is going to get more than what she should or would have otherwise, and somebody is going to get less than what she would have otherwise. It seems unfair.

Mr. Lupusella: The case of two spouses, not having dependants, for example.

Mr. Cain: Of course, the lump sum does not reflect whether there are any children. Perhaps under this subsection one could ignore whether either of these spouses or individuals has children, yet one is drawn a little to think in the case just described, where the 30-year-old would get the larger lump sum, if you maintain the principle, what if the 50-year-old had three children and the 30-year-old none? If you maintain the principle, that should not matter because you are going to split the 90 per cent of net a little differently. There are just so many ways of looking at it.

Mr. Sweeney: Would it be possible to say that you would assume that each spouse was the only spouse and arrive at both a percentage figure and a lump sum figure just for them? Then you would decide upon a split between the two, and each would get her percentage of that.

Let us say the split is 60:40. I do not know why that would be, but let us just say it is decided that is what it should be. The one spouse would get 60 per cent of what she would be entitled to had she been the only spouse. The other would get 40 per cent of whatever she would have been entitled to had she been the only spouse. At least it would be fairer. They would be getting 60 and 40 per cent of two different figures.

Mr. Gillies: I was just thinking that.

Mr. Sweeney: I recognize that. But at the same time at least they are getting a percentage of something they would have been entitled to anyway, had they been the only spouse. But if you pick a single figure and try to come down the middle between the two of them, you are going to be giving one more than she would have got otherwise and the other one less than what she would have got, otherwise.

It seems to me that somewhere along the line we could put something in here--and I have no idea how to draft it--so that either of the spouses would not be disadvantaged because of the lower or higher age of the other spouse. I am not concerned that somebody might get a little too much; obviously, it is not going to be very much. I am concerned about the one who may be disadvantaged and who may get less than what she would have otherwise.

Mr. Lupusella: The principle of Solomon, I guess.

Mr. Gillies: I guess the thing that is troubling, and the reason I would opt for flexibility, is suppose there was a divorced spouse, the divorce goes back 12 to 15 years and the financial relationship between her and the now deceased worker is very tenuous, such as \$20 a month or something. There is also another spouse with surviving children, and her relationship with the deceased was very immediate and financially dependent. If it were just based on age, there could be a very unfair split of that lump sum.

If we left it to the board, I hope it would look at a case like that and, using a little reason, apportion it more fairly than if we just say it has to be an age-based formula.

Mr. Sweeney: Except that, as the subsection now is worded, legally and legislatively it would be within the power of the board to take the lowest possible combination and split it, quite fairly, as the figure that you start with. That would be legal under this subsection.

The board could say, "We will take the lump sum figure for the oldest person, and we will take the percentage figure for the youngest person, make that a combined package and split it 60:40, 50:50, whatever the case." I do not see any reason why that would not be legal the way this section is written now. There is nothing to prevent that happening.

Mr. Gillies: Subject to appeal, of course.

Mr. Sweeney: Appealed on what? It is legal. There is nothing in the legislation that requires them to avoid disadvantaging one of the spouses because of her age in comparison with the other. There is nothing that prevents them from doing that.

Mr. Gillies: Yes, but to go back to point one--

Mr. Sweeney: What would be the basis of your appeal? The chairman would simply say, "This is what the legislation says."

Mr. Laughren: That is the very reason you could appeal it, John, because the system does not rule it out.

Mr. Gillies: In fact, you could appeal if it were a discretionary award and the board said, "We have decided that \$30,000 is going to be apportioned."

Mr. Hess, I might ask you if I am correct in this, but I think the very amount set by the board would be subject to appeal. The surviving spouses could appeal it and say, "It should not be \$30,000; it should be \$50,000, and here are the reasons."

Mr. Sweeney: I do not think you would win that appeal.

Mr. Havrot: Mr. Chairman, under subsection 36(14), it says, "A person who ceased to be a spouse," etc., and we get down to where it says, "as a spouse where the worker was or would have been required had the worker not died to make support, maintenance or alimony payments under a separation agreement or judicial order."

Mr. Sweeney: Ed, subsection 36(14) is not the problem; subsection 36(15) is the problem.

Mr. Havrot: But I am saying the apportionment would be based on his income. The alimony payments that the court had ordered him to pay would be paid on the percentage of his income; accordingly, the percentage of the moneys that would be given in a lump sum would be apportioned on that basis, and the second wife would get the remainder.

Mr. Sweeney: But the problem is subsection 36(15). The problem is not with the apportionment; it is with the amount you start out with to apportion.

Mr. Havrot: You would base it on the age of his second wife, I would assume.

Mr. Sweeney: Why?

Mr. Havrot: Because I would say that in the eyes of the law she is his legal spouse, and the benefits he is paying on the separation agreement are all vastly different.

Mr. Laughren: He may be separated from the two of them.

Mr. Havrot: That is quite possible.

Mr. Sweeney: I do not think it is that simple.

Mr. Havrot: Why not?

Mr. Sweeney: Let us just say for the sake of argument--although it is not likely, given the realities, as someone else mentioned earlier--that the second wife is older than the first one. That means the lump sum you have to work with is lower than it would have been otherwise. Both of them are going to end up with less money than they would--

Mr. Havrot: I would think that the legal wife, the second wife, would get the lump sum payment, period. Then out of whatever pension he was entitled to, the divorced person would get the portion that was given to her under the courts.

Mr. Sweeney: That is not what subsection 36(14) says.

Mr. Havrot: Alimony, yes: "support, maintenance or alimony payments under a separation agreement or judicial order."

Mr. Sweeney: But it says under subsection 36(14) that wife is entitled to the same compensation she would have received had she been his wife at that time, even though she is not. She could be entitled to more than she was getting under the support agreement, according to subsection 36(14).

Mr. Havrot: The big question here is whether the deceased had married a second time.

Mr. Sweeney: Sure. That is why subsection 36(15) is the problem, not subsection 36(14).

Mr. Havrot: I would leave that one to the board to worry about.

Mr. Sweeney: Mr. Chairman, all I am trying to do is to raise the spectre of a problem under subsection 36(15), because we do not build in any guarantee to prevent our disadvantaging one of them. What is the word I am looking for? Is there such a word?

I have no problem with leaving the board the apportionment factor. I have no problem with subsection 36(14); that is fine. But when you have to split an amount of money between two people, the amount you start with is critically important. You can have a

fair split, but if one is disadvantaged because of her age compared to that of the other person, then you are dealing with an unfairness.

I think there should be something in subsection 36(15), and I would have to request the assistance of a drafter because I do not know how to do it. I see that our other drafter is not quite sure how to do it either.

Mr. Revell: Not at this stage.

Mr. Sweeney: I think we should leave it. I know we are leaving an awful lot of them, but I think there is a real problem there. If we can find a way to prevent the problem and, quite frankly, prevent a lot of unnecessary appeals, which is one of the things we said almost two years ago when we started this, let us draft this legislation this time so we avoid appeals if we can.

Mr. Chairman: Mr. Laughren, do you have a solution or a question?

2:20 p.m.

Mr. Laughren: I guess the only obvious one is that we stand this down too and think about it. I think it is extremely difficult, and I would not want to see us work out a precise formula. However, I share John Sweeney's concerns as well. It is so open now that the board does not have to pay anybody \$50,000. They could say--there is not an award of \$20,000 in there, is there, or is that implied?

Interjection: It does not say.

Mr. Laughren: So there is not even a requirement that it be \$20,000, which is the minimum under the other sections. I am as nervous as anybody else about this section in the way it is currently worded.

I would never second-guess people who draft legislation, because I know what kind of precision you have to have in your mind to undertake such a difficult task, but I think this is one case where we are going to have to ask them to rethink it.

Mr. Lupusella: I have a practical suggestion based on the hypothetical situation of other subsections, which might take into consideration the concern that has been expressed.

First of all, we have to decide, in the case where there are two spouses without dependants, how the total amount of \$60,000 will be divided and shared. Of course, at the moment, the board has the full power to decide in that case. I know that John was concerned to express a principle that the sharing process be fair and just for both of them.

On that concern, I would incorporate the needs principle, which might guide the board towards a decision in sharing the total amount. If we incorporate that principle and look at the needs of the two people, I think we are going to achieve a fairer process in sharing the money.

For example, let us say there are two spouses. One is young. The other one is older and very sick, without any prospects of returning to the labour market because of a permanent disability which is not compensatory. In this case, I think the needs aspect might guide the board to give her a fair share of the money when it divides the \$60,000.

So we need a subsection to take into consideration hypothetical situation number one.

Number two, we might be faced with a situation in which there are two spouses: one with dependants--children--and the other without. I would say that more consideration should be given to the spouse with children than to the other if the board wants to operate with a sense of fairness and justice.

Those two hypothetical situations would take into consideration the concerns expressed by us and by John. We need two subsections to incorporate into the act the two hypothetical situations in which the board might find itself when it has to make decisions regarding the division of money. As well, the needs principle incorporated in those two subsections would make the sharing process more equitable.

Mr. Gillies: I must say, I am very glad the three members who spoke on this subject agree with me that we should try to come up with something fair. At the same time, we seem to agree that to come up with a rigid formula, and to put it in the legislation, will probably end up being a disaster.

Would you allow us to look at it over the weekend to see if we can come up with something that addresses the concerns? I think we are all of a mind on this; it is just a question of how to do it.

Mr. Chairman: Okay. There is no problem with subsection 14.

Subsection 14 agreed to.

On subsection 15:

Mr. Chairman: Subsection 15 is stood down.

Mr. Lupusella: Subsection 15 was read.

Mr. Chairman: Amendments?

Mr. Lupusella: On subsection 15, of course, if we are contemplating other subsections over the weekend, there is no need to redraft 14 and 15 as well. Why are we supposed to vote on subsections 14 and 15 now when we--

Mr. Chairman: No, we are not. We passed subsection 14. Subsection 15 is where our problem is and it is stood down.

On subsection 6:

Mr. Chairman: The ministry has an amendment here to a previously passed subsection. Would you like to introduce that?

Mr. Gillies: Yes, if I might. This goes back to the discussion Mr. Laughren and I had back on subsection 6, where there was a concern, I think on both our parts. I will just read the first couple of lines of that subsection, "Where a deceased worker is not survived by a spouse, a child or children and there are dependants, the dependants are entitled," etc.

I think we all had a concern that even if those children were not dependent, the way this is worded here they could act as a bar to other dependants such as the parents, as the member for Dovercourt (Mr. Lupusella) mentioned.

What I would propose is an amendment just inserting the word "dependent" in front of "child or children" so that it is very clear that the dependent children get the first crack and beyond that there could be other dependants, such as the parents, the aunt or uncle who raised the deceased, etc.

Mr. Chairman: Mr. Gillies moves that subsection 36(6) of the act, as set out in section 9 of the bill, be amended by striking out "a child or children" in the first and second lines and inserting in lieu thereof "or by a dependent child or children."

Is that clearly understood?

Mr. Sweeney: Does it make any sense to continue to have in there "and there are dependants"?

Mr. Gillies: Yes, I think it does.

Mr. Sweeney: So it will say then, "or by a dependent child or children and there are dependants."

Mr. Gillies: Yes, because what we are saying is that where there is not a spouse and where there is not a dependent child or children but there are other dependants.

Mr. Sweeney: Then the other dependants trigger in.

Mr. Gillies: Right.

Mr. Laughren: In the interests of the English language, is it correct to say "a dependent child or children," or is it "any children"? I do not mean to be picky.

Mr. Revell: I think it is acceptable to leave off some of the articles such as "any." I think you will find this very common in technical writing.

Mr. Laughren: I do not find it too offensive.

Mr. Gillies: I wondered at first if it should, in fact, say "a dependent child or dependent children," but if you look at subsection 5 right above, it says "dependent child or children." That seems to be the language all through the bill.

Amendment agreed to.

Subsection 6, as amended, agreed to.

On subsection 16:

Mr. Chairman: We will move on to Mr. Lupusella, who wanted to move an amendment to section 9.

Mr. Lupusella: Section 9? Not me.

2:30 p.m.

Mr. Chairman: No, I think it was Mr. Laughren. Mr. Laughren's name is on that one.

On section 9:

Mr. Chairman: Mr. Laughren moves that section 36 of the Act as set out in section 9 of the bill, be amended by adding thereto the following subsection:

"(16). Where a worker died before the coming into force of this section and the death resulted from an injury, a spouse alive on the day this section comes into force shall be entitled to compensation payable by way of a lump sum of \$40,000 and subsections 14 and 15 apply with necessary modifications."

Mr. Laughren: This is an admittedly clumsy attempt to provide some retroactivity for spouses whose spouse was killed on the job before this bill becomes the law of the land. It is not perfect by any stretch of the imagination. The dollar figure is arbitrary, but it says to those people, "We have not forgotten you."

It is important that it be recognized that people whose spouses were killed on the job after this bill comes into effect will get that lump sum which nobody else ever got except for burial expenses. This says to those people, "We are not trying to rewrite history but the level of benefits was too low for many years."

Probably the most embarrassing part of the legislation was the awards to dependants for people killed on the job. This is a way of trying to rectify that. While I know that it deliberately avoids pensions, it was not my original intention, as you saw by my original amendment. It is because I believe it would be terribly complex to open it up for somebody whose spouse was killed a number of years ago, because of the question of children, remarriage and all those kinds of things. This is simply a way of saying to those people, "We are doing the best we can in a manageable way to provide a benefit to those who lost spouses previously."

When I first really felt this very strongly was when we were debating this bill in the spring when there was a serious accident at Falconbridge Nickel Mines in Sudbury and three people were killed. It occurred to me at that point and I mentioned it to the

minister. If I recall correctly, he said he would take a look at it. I did not dwell on it because it was too close to the event, but I felt at that time he would have an example of those people. Although we were debating the bill as that accident happened, those survivors would not receive any benefit of the bill. Because of the way in which the machinery of government works with debate, public hearings and so forth, there was no way it could work.

It is not meant as a criticism, but on the other hand that is not the fault of the people with surviving dependants. For that reason, this is an attempt to say it is a very clean-cut way to provide a lump sum award to all of those surviving spouses out there.

Mr. Sweeney: Can I ask a question?

Mr. Chairman: Sure.

Mr. Sweeney: Can I ask the mover why he would not ask that clause 36(1)(a) be triggered in? Clause 36(1)(a) spreads it from \$20,000 to \$60,000.

Mr. Chairman: Page 7.

Mr. Sweeney: In other words, why fix it at a single \$40,000 figure?

Mr. Laughren: For one thing, it is subject to negotiation and discussion. When that worker was killed on the job, the spouse may have been aged 20 or 30 or 40 and now the surviving spouse may be 30, 40, 50, 60 or 70. So there would be no relationship between the age of the spouse now and the age of the surviving spouse when the worker was killed on the job. That was one reason.

Mr. Sweeney: So you are just taking the average figure?

Mr. Laughren: Exactly. It is terribly arbitrary. If the government members cannot live with that, I wish they would debate a figure they could live with.

Mr. Sweeney: You are prepared to accept the dropping of any kind of change in the pension factor with this? I am just trying to clarify what you are saying.

Mr. Laughren: For ongoing benefits, do you mean?

Mr. Sweeney: Yes.

Mr. Laughren: Yes. I thought it was just too complex to handle. If someone can come up with a formula--I could not--fine, we will discuss it, but I would not rule out this section.

Mr. Sweeney: May I ask the parliamentary assistant, with respect to the paper we were given this morning on the actuarial estimate of applying the survivors' benefits, that did include both the pension and the lump sum?

Mr. Gillies: Yes. I am just looking for that, Mr. Sweeney.

Mr. Sweeney: You gave it to us this morning.

Mr. Chairman: It was yesterday.

Mr. Gillies: Was it yesterday? I am sorry, excuse me.

Mr. Sweeney: Either time, but it included both?

Mr. Gillies: Yes. There was a figure in there for the capitalized value of survivor benefits, existing claimants. It is \$765 million, which consists of \$162 million for lump sum benefits and \$603 million for pensions.

Mr. Sweeney: Therefore, assuming Mr. Laughren's proposal does cover an overall average, which I assume this one probably does as well, and granted they are both rough figures, we are looking at \$162 million to implement it?

Mr. Gillies: Roughly.

Mr. Sweeney: Again, round figures, give or take.

Mr. Gillies: Yes, roughly. I am just trying to see if our assumption was of a \$40,000 payment.

Mr. Welton: No. Our assumption was applying the numbers that are laid down in the new survivors' scheme, so that different people would get different amounts. But if one assumes that \$40,000 might be a rough average of those payments, then the costs would be close.

Mr. Sweeney: It would be close. It may not be exact, but it would be close.

Mr. Welton: It would be in that region; that is for sure.

Mr. Laughren: If you were to apply the age formula and if the average age of the widows out there now is 63, then it would drop that \$40,000 down to \$20,000.

Mr. Sweeney: Yes.

Mr. Gillies: And you are saying a fixed sum of \$40,000. So if that age was one of the actuarial assumptions, then the actual cost could be quite a bit more than \$162 million.

Mr. Laughren: No, it would be half as much.

Mr. Welton: I have not had a chance to look at the document, but my understanding is that it is calculated on the basis of the age of the spouse at the time of the accident.

Mr. Sweeney: That would then be an average.

Mr. Welton: Yes. I think it would be lower if you took the age today, because it goes down with age.

Mr. Lupusella: I still do not understand your rationale, because with the present act today they are all receiving the same amount of pension.

Mr. Welton: Yes.

Mr. Lupusella: So why are you using this rationale with the new act? Why should they not get the same lump sum?

Mr. Welton: It is not my rationale. I am just explaining--

Mr. Lupusella: Well, you are attempting to justify--

Mr. Chairman: No, no.

Mr. Welton: I am just explaining the basis on which that cost is calculated. The question I think that was asked was, in order to get these numbers, what would the cost be of applying the provisions of the current act to existing claimants as well as to new ones.

Mr. Lupusella: I do not see any problem.

Mr. Welton: Since the provision relates to the age at death, then it was applied in that fashion in doing the costing.

2:40 p.m.

Mr. Lupusella: You appreciate my position as well, that within the present act everyone receives the same amount of pension. Why should they not, with my colleague's proposal, receive the same lump sum, even though there is a discrepancy on the ceiling?

Mr. Welton: I am not justifying either one; I am just saying--

Mr. Lupusella: You gave an answer.

Mr. Chairman: Are we satisfied?

Mr. Sweeney: I think we at least know what we are voting on.

Mr. Chairman: All those in favour of the amendment--

Mr. Gillies: Mr. Chairman, if you want to put the question now, that is fine, but in view of the fact that we are not going to pass section 9 today anyway, as there are other things we have undertaken to respond to, I wonder if you might allow us to bring this amendment back next week.

Mr. Laughren: As a closing comment, I feel very strongly that there needs to be an element of retroactivity in the bill. What you can live with, we will see. I think there needs to be an element of retroactivity.

Mr. Lupusella: Do I notice a sign of goodwill?

Mr. Gillies: All I will say is that I do not want to raise any hopes or expectations at all. I am sure all members of the committee know the position of the ministry has been not to have a retroactive feature in bill. I have a very great concern, one, about the cost and, two, about the precedent that might be set in this type of legislation.

All I am asking is that before the question is put we might have a little discussion back at the ministry.

Mr. Laughren: Do you say that just in case it might get defeated or in case it might pass?

Mr. Gillies: I will leave that to your imagination.

Mr. Sweeney: Perhaps you should also point out to the ministry that this is the one area where we are arguing for the retroactive clause because there is nothing these people can do to help themselves.

Mr. Chairman: We have that amendment on the floor and it is agreed that it be stood down.

Mr. Lupusella: Are you postponing this amendment until Monday so you can diffuse the emotional feelings on this issue?

Mr. Gillies: How could you? I am wounded. We have never had that question before.

Mr. Chairman: I think you almost had some support there. You may have lost all the support you were going to have.

Interjections.

Mr. Laughren: We have a good relationship with the parliamentary assistant and sometimes we have this exchange.

Mr. Chairman: You are in trouble.

Mr. Gillies: I must order the Hansard.

Mr. Sweeney: We are trying to get you re-elected in Brantford.

Interjections.

Mr. Chairman: Do you want to introduce your amendment?

Mr. Lupusella: I have another amendment that is not part of any provision at this time. It is a situation that really exists, but I do not want to debate the principle of the subsections before reading them.

Mr. Chairman: Mr. Lupusella moves that section 36 of the act, as set out in section 9 of the bill, be amended by adding thereto the following subsections:

"(17) Where death results from an injury to a worker and the deceased worker is not survived by a person who is entitled to receive a payment under any other provision of this section, but the worker's mother and father, or either of them, survive the worker, or the only persons entitled to a payment under subsection 6 are the worker's mother and father, or either of them, they shall be entitled to receive in aggregate a total lump sum payment of \$40,000.

"(18) Where a worker died before the coming into force of this section, and the worker's mother and father, or either of them, would have been entitled to a payment under subsection 17 had this section been in force at the time of the death, the mother and father, or either of them, alive on the day this section comes into force shall be entitled to receive in aggregate a total lump sum payment of \$40,000.

Mr. Lupusella: Mr. Chairman, there is another typical situation which has not been contemplated by Bill 101, which exists in cases where there is neither a spouse nor dependent children involved; the mother and father are alone. Subsection 18 takes into consideration the retroactivity clause which we are concerned about, even with the amendments which will come into force under Bill 101.

Again, I do not want to reiterate the situation of some constituents of mine who lost their son. The only payment they got was \$900 for funeral expenses, and nothing else. Even 10 years after the loss of their son, there is a tragedy involved. They go through a very cruel, traumatic and psychological stress which will last throughout the rest of their lives.

If you want to keep in line with the principle enunciated by Professor Weiler, that pain and suffering must be compensated, you must keep in mind that pain and suffering affect the mother and father of the deceased worker. I am sure the \$40,000 lump sum payment will not resolve the physical and mental stress they have been faced with as a result of the death of their son. It is something that will at least help their financial situation.

I remind the members of this committee that the parents of a deceased worker without a spouse and dependent children are faced with medical expenses and so on as a result of nervous breakdowns, pain and suffering. We have an obligation to them. Members should take into consideration the principle incorporated into those two clauses.

The retroactivity clause will take into consideration the fact that they are parents who should receive such an amount--even though the tragedy took place 10 or 20 years ago--if the parents of the deceased worker are still alive. We have an obligation, as cited, to compensate for the damage caused by the disappearance of their son or daughter.

I do not think we will be faced with many such situations. We might tackle 20 or 25 cases, or even two. I do not know. Perhaps the only people concerned live in my area.

If you are extremely concerned--and I am not a big defender of the money spent to put justice into the system--I do not think we will need a great deal of money to remunerate these people. I am sure these are just isolated cases.

2:50 p.m.

I do not have any statistical data to back up my provisions, but I do not think the number is too high--unless the board can help us by giving us statistics which might guide us to the point where this amendment would be worth being supported and passed.

If the members of the government party are extremely concerned about money, I do not think money is the factor that should prevent us from passing this section.

Mr. Gillies: I appreciate the concern the member has expressed in this amendment. I am afraid it is an amendment we cannot accept. However, our concern is not money. You are quite right, there would be very few cases where this actually applies. It is not a dollars and cents thing. Our concern, rather, is a legal question.

If you go back to subsection 36(6), it is laid out quite clearly that in the absence of a surviving spouse or surviving dependent children, as we just amended that subsection, there can be compensation apportioned to other dependants, and we had in mind that those dependants could be surviving parents. In subsection 6 we are taking care of a great number of people you are trying to take care of with your proposed amendment.

Our concern is that we feel it is critical to the bill that we be consistent throughout the bill in ensuring that compensation goes to dependants and that dependency is established. Through your amendment, you would be apportioning awards to people who are not necessarily dependent; in other words, parents who did not have any form of financial dependency on their children and so on.

There are a couple of obvious concerns with that. One is that in some cases there would be awards going to people not in need and perhaps where the relationship was not financially merited. The other concern would be that in so doing, I am sure with the best of intentions, you would be removing from such people the right to sue. This would be the only place in Bill 101 --and I stand to be corrected on this--where by making an award you would remove the right to sue from people who are not dependent.

Mr. Lupusella: We can cover your concern very well, unless your position is just to exclude completely the concern that is expressed within the two subsections, 17 and 18, regarding my amendments.

The section you mentioned about dependency has nothing to do with my subsections, with great respect. If you follow the pattern of your position, you are not giving the right weight to the pain and suffering faced by parents on losing their son. That is number one, namely, that the greatest damage caused by a fatal accident

to the parents is the disappearance of their son or daughter. Pain and suffering are in line with the principles enunciated by Professor Weiler and within the thrust and principle of the whole compensation scheme which has been in effect since 1914, even under Bill 101 and the old act.

You might be faced with this situation. Just because dependency is not the main factor that can be demonstrated before the board, we are penalizing people who will suffer for the rest of their lives because of the loss of a son through a tragic accident. You are not concerned about money because we are not--

Mr. Mancini: I cannot hear with all the chatter that is going on.

Mr. Lupusella: The dependency provision is one thing, but the provisions of those two subsections deal with a situation where there is no dependency but the parents are suffering psychologically and physically the pain and suffering involved because they have lost a son or a daughter--you name it. It is a typical situation that cannot be related to previous sections of the bill. That is why we are trying to put some justice into the system.

The other thing you mentioned is consistency and dependency, which must be shown. You had better come out with a clear position that you are not endorsing the principles of my subsections 36(17) and (18) of the bill, and I think it would be better to reply to my concern.

Mr. Gillies: I do not want in any way to minimize the concern you have expressed or, indeed, the pain and suffering of the parents; that is not it at all. But, with respect, I would refer you right back to subsection 3(1), the very first thing the act states after the definitions:

"Where in any employment, to which this part applies, personal injury by accident arising out of and in the course of the employment is caused to a worker, the worker and the worker's dependants are entitled to benefits in the manner and to the extent provided under this act."

That is really the keystone of the whole bill, and everything else we do in Bill 101 arises out of it: the worker and his dependants. Many of those parents, for whom you quite rightly express your concern, I am convinced are covered under subsection 36(6). Our only concern is those few who may not in any way have a dependent relationship to the deceased and the fact that this quite substantially, I think, changes the intent of the bill.

Mr. Lupusella: We have a different perspective on the argument that is before this committee. In subsection 36(15), for example, we made provisions for the hypothetical situation where there are two spouses involved. The concern expressed by members about how the money should be split and so on has been clearly identified.

Now to defend your argument you are coming out with section

1 or 2 of the bill, which is the dependancy section, and I do not think you have good grounds for rejecting a principle of justice and fairness within the system, with great respect.

By the way, if you are dealing with four or five cases that will be covered under those two subsections, I think we have an obligation as legislators to take into consideration the concern of these parents without their going through the agony of showing dependency.

Mr. Gillies: With respect, though, part of our debate on subsection 36(15) was about the necessity of establishing a financial relationship between deceased, separated spouses and so on; so I do feel that what I am saying is quite consistent with what all members were talking about in subsection 36(15).

It is a very difficult area, and I appreciate what you are trying to do, believe me; but we just feel that your amendment departs from any other aspect of Bill 101.

Mr. Sweeney: Mr. Chairman, I have a question. Before you finally decide on this, I would like to come back to a point Mr. Gillies made.

On page 3 of the act, "member of the family" includes father and mother among others. On page 12 of the act, section 14, it would clearly seem to say that members of the family do not have the right to sue. Therefore, regardless of compensation they do not have the right to sue, anyway. If I am interpreting it correctly, that is what it seems to say; so that would not make any difference.

Mr. Gillies: Just a second. That is not what I was told yesterday. Let us see if we can--

Mr. Sweeney: There may be other reasons for not supporting this, and if that is the reason, it would not appear to be a valid reason.

Mr. Gillies: Yes.

Mr. Sweeney: The only way you could get around it would be if you put the word "dependent" in front of the word "members." Then you would make the separation--

Mr. Gillies: What is the practice? Have there been suits by nondependent members of families?

Mr. Hess: May I explain something?

Mr. Sweeney: Am I reaching, or does that make any sense?

Mr. Hess: The problem arises because, as you pointed out quite correctly, it is the definitions. If you look at the definition of "dependant," it means those such as the members of the family who are dependent on the earnings of the worker. Then that definition of "members of the family" is to assist in determining what a dependant would or would not include. It is really a definition of a phrase in another definition.

Mr. Sweeney: But surely, Mr. Hess, the word "dependent" is the critical one there, and if you do not have it in then the application is not valid. If you put the word "dependent" in front of--

Mr. Hess: Yes, but the worker or the members of his family are or may be entitled against an employer.

Mr. Sweeney: Yes.

Mr. Hess: If you look at subsection 9 on page 9, for example, if you look at the appropriate language there--I am transposing it so it reads in order--"No dependant of a worker of an employer in schedule 1 has any right of action for damages against any employer in schedule 1 or any worker for injuries for which benefits are payable."

When you read it altogether, it becomes rather apparent that what you are talking about in section 14 is a member of the family who is a dependant of a worker.

Mr. Sweeney: But if you do not have the word "dependent" in front of the word "member," do you not leave it open to interpretation by a judge that you are giving it with one case and taking it away with the other?

Mr. Hess: In this case it would be an interpretation by the board, I suggest.

Mr. Sweeney: Whomever.

Mr. Hess: Under sections 14 and 15.

Mr. Gillies: But to the best of your knowledge, Paul, has that matter ever had a decision rendered by the board?

Mr. Hess: Not that I am aware. I have not heard of one on that point, no. That leads me to believe that what I have suggested is the correct approach. No one has tried it, at any rate, that I can recall.

Mr. Sweeney: Could we check that over the weekend? I assume it is almost time anyway. I think there may be some evidence of that, in fact, taking place. If we are using that as the reason for doing something, we had better be aware of what has actually happened.

Mr. Chairman: We are not going to resolve this in a couple of minutes. I do not think we are.

Mr. Sweeney: We are not.

Mr. Chairman: I have your name on the list, Mr. Laughren. We are going to get an interpretation here on that and we shall come back Monday morning at 10 a.m. all fresh and ready to continue with an amendment to subsection 17. We shall adjourn until 10 a.m. Monday.

The committee adjourned at 3:05 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

MONDAY, SEPTEMBER 10, 1984

Morning sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)
Gillies, P. A. (Brantford PC)
Havrot, E. M. (Timiskaming PC)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Kennedy, R. D. (Mississauga South PC)
Laughren, F. (Nickel Belt NDP)
Lupusella, A. (Dovercourt NDP)
Mancini, R. (Essex South L)
Riddell, J. K. (Huron-Middlesex L)
Sweeney, J. (Kitchener-Wilmot L)
Yakabuski, P. J. (Renfrew South PC)

Substitution:

Kolyn, A. (Lakeshore PC) for Mr. Villeneuve

Also taking part:

Gillies, P. A. (Brantford PC), Parliamentary Assistant to the
Minister of Labour

Ramsay, Hon. R. H., Minister of Labour (Sault Ste. Marie PC)

Clerk pro tem: Carrozza, F.

Staff: Revell, D., Legislative Counsel

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation
Board

Hess, P. A., Director, Legal Services Branch

Wolfson, Dr. A. D., Assistant Deputy Minister, Program Analysis
and Implementation

Witness:

Farquhar, A., Staff Lawyer, Legal Aid Clinic, Industrial Accident
Victims Group of Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday, September 10, 1984

The committee met at 10:12 a.m. in committee room 2.

WORKERS' COMPENSATION AMENDMENT ACT
(continued)

Resuming the adjourned consideration of Bill 101, An Act to amend the Workers' Compensation Act.

On section 9:

Mr. Chairman: I will call the committee members to order. On Friday afternoon when we adjourned we were discussing subsection 17.

Mr. Lupusella: I think it was stood down--17. It appears that the decision was to discuss the item later on when the minister or the ministry is going to give us their opinion.

Mr. Chairman: No, subsection 16 was stood down. I thought we were still in the middle of discussion on subsections 17 and 18.

Mr. Lupusella: No. My motion was stood down.

Mr. Chairman: All right. I guess the amendments, which would be subsections 16, 17 and 18, were all stood down for further information. The ministry does not have the information as yet, so if it is agreeable we will move on.

Interjection: But they are working on it.

Mr. Chairman: Yes, they are working on it. There are several other items that were stood down in that section, which is section 9 of the bill, section 36 of the act. There are some other items that were stood down. We will deal with them all at one time.

It was suggested to me that perhaps it may not be necessary to read each of the clauses out in advance. What is the feeling of the committee?

Interjection: Agreed.

Mr. Laughren: Where?

Mr. Chairman: No, as we go on. We are going to start on section 10, which is simply repealing two clauses. Is it necessary to read the whole section out?

Mr. Laughren: I think it is.

Mr. Chairman: What is the feeling of committee members?

Mr. Laughren: The reason I think it is necessary is that several times, so far, things have been triggered when we are reading them. I think it is very useful myself.

Mr. Chairman: All right, we shall.

Mr. Havrot: (Inaudible).

Mr. Laughren: Well, Ed, we know you have problems sitting here in the first place.

Mr. Havrot: Yes, I am sure you have too. Be nice, Floyd. You may need us some day.

Mr. Chairman: Section 10 simply is, "Sections 37 and 38 of the said act are repealed." Will that carry?

Agreed to.

Mr. Laughren: What does that do?

Mr. Chairman: It takes a couple of previous clauses out of there.

Mr. Laughren: Yes, I know.

Mr. Chairman: I was hoping committee members would have some indication of whether there are contentious points in these clauses.

Mr. Laughren: Well, we know.

Mr. Lupusella: What are the sections which have been repealed, Mr. Chairman?

Hon. Mr. Ramsay: I think I can respond to this. It deals with remarriage of the surviving spouse. The amendment provides that surviving benefits shall not cease upon remarriage. Children's benefits cease when they reach 19 or when they complete their formal education.

Mr. Chairman: Shall that carry?

Agreed to.

On section 11:

Mr. Chairman: Section 11 of the bill: "Sections 39, 40 and 41, section 42, as amended by the Statutes of Ontario, 1981, chapter 30, section 3, 1982, chapter 61, section 6 and 1983, chapter 45, section 3"---do you want me to read this whole thing out? Shall it carry?

Mr. Laughren: It is just substituting the following?
Okay.

Mr. Chairman: Shall that carry?

Mr. Laughren: Well, wait a minute.

Mr. Lupusella: We have not voted on--

Mr. Laughren: You are saying "and the following substituted therefor," so all you are really doing--so far what you read is that--

Mr. Chairman: I am sorry. Okay. You are right.

Mr. Lupusella: It is like a preamble.

Mr. Laughren: Right. You have repealed that, but let us go into what you are replacing it with.

Mr. Chairman: Okay. It is being substituted therefor. Right. Section 39: "Compensation for disability shall be computed and payable from and including the day following the day of the accident or from the date of the disability, whichever is the later."

Mr. Laughren: It implies that if the action happens on a Monday, the compensation is paid--so, if you are already at work, you get paid for that day and then the following day, compensation would fall into place.

Mr. Chairman: Paid for Monday by the employer and Tuesday on by the board.

Mr. Laughren: Is there anything that says--say the worker came in at seven in the morning, was injured at nine and is an hourly-rated employee, what happens to the rest of the day?

Hon. Mr. Ramsay: It is paid by the employer.

Mr. Laughren: Paid by the employer.

Hon. Mr. Ramsay: That is being done in a lot of cases already. For example, in Sault Ste. Marie Algoma Steel does that. This makes it uniform.

Mr. Laughren: Yes, but is that the law of the land, that is what I am wondering.

Hon. Mr. Ramsay: It will be.

Mr. Chairman: It will be. It is not now.

Hon. Mr. Ramsay: No. It is optional now. The first day is optional.

Mr. Chairman: You will recall that was a real concern of the various employer groups who appeared before us. I think it is true that it is being paid by a number of employers now, but under this act, once this bill is completed, it will be the law of the land.

Mr. Laughren: Except what made me nervous here is that

it says, "shall be computed and payable from and including the day following the day of the accident." That does not answer my question, I do not think.

Mr. Hess: Section 3(2), which has been carried and which provided for the payment of--

Mr. Laughren: Oh, I am sorry.

Mr. Hess: --wages on the day the accident occurred or during the shift it occurred.

Mr. Laughren: Yes. Thank you.

Mr. Chairman: Okay. Shall that carry?

10:20 a.m.

Mr. Lupusella: I have a concern which I would like to express under section 39. I understand that there is some improvement to the system, because the worker is not penalized now if he did not complete the day of his or her work as a result of the accident.

The concern which I would like to bring to your attention, Mr. Chairman and members of the committee, is that the formula which will be used with Bill 101 on computing the level of benefits is fixed with the same formula of the average of four weeks prior to the accident; 90 per cent of net. Am I correct?

Mr. Cain: No. The method of calculating gross earnings is different under Bill 101.

Mr. Lupusella: Okay. To be more specific, what is going to happen, for example, if a worker will not have the full four weeks prior to the time of the accident?

Mr. Cain: The idea of four weeks disappears in Bill 101. Replacing it is subsection 43(1) on page 12.

Mr. Lupusella: Are you telling me that all injured workers are going to get more or less the same amount of weekly payments when they are injured and they are not penalized because they do not complete one week of work because of the accident?

Mr. Cain: If it is their first day of work then the earnings would be calculated in accordance with subsection 43(1). We take the nominal rate, which is the basic rate by which they are paid, the hourly rate, daily, weekly, monthly--whatever that method is. We take that as their earnings rate and calculate 90 per cent of net from that; or--you will see there is a clause (b).

Mr. Lupusella: I take it we should read the sections, but I would like to have the option to come back to this section, Mr. Chairman, which will facilitate the process of my concern.

The Acting Chairman (Mr. Havrot): Do you want to stand this down? I thought we had moved this section.

Mr. Lupusella: No. We are just debating section 39.

The Acting Chairman: Do you want to stand it down until we get to subsection 43(1)?

Mr. Lupusella: Yes.

Mr. Laughren: I have a further question that flows from what Mr. Cain was saying. If a worker is on unemployment insurance and has been on unemployment insurance for six months, eight months, 10 months even, and there is a recurrence of a previous injury and it is a fairly serious recurrence, for example a back or whatever, how do you compute that worker's earnings under this bill?

Mr. Cain: Under Bill 101 we would use the section I am referring to. We have nominal rate, but it is important, as Mr. Lupusella said, we have to get to clause 43(1)(b) as well. If someone insists the nominal rate is not a fair way to calculate gross earnings then we have to take a year's earnings. Then all the things you are referring to come into play.

Mr. Laughren: We have had real problems with that.

Mr. Lupusella: Yes.

Mr. Cain: I think that point will be clarified for you under section 43.

Mr. Laughren: So you think we should debate it there?

Mr. Cain: I believe so, yes.

Mr. Laughren: Okay, right you are. Thank you.

The Acting Chairman: Section 40.

Mr. Laughren: We stood down section 39, did we?

The Acting Chairman: That is right.

On section 40:

The Acting Chairman: Section 40: "(1) Where injury to a worker results in temporary total disability, the worker is entitled to compensation under this act in an amount equal to 90 per cent of the worker's net average earnings before the injury so long as temporary total disability continues."

Mr. Laughren: I am concerned, believe it or not, by the 90 per cent. Perhaps we should debate the inequity of having 90 per cent of net as opposed to 75 per cent of gross, or what is probably more appropriate, 90 per cent of net as opposed to 100 per cent of net.

It is the old problem. I suppose the debate we had the other day probably belonged more rightly under this section, but the

chairman at that time was not doing his job and allowed us to carry on an extensive debate.

It seems to me we are back to the old problem of having one group of injured workers subsidize another. In other words, the people at the higher end of the scale will subsidize injured workers at the lower end of the scale.

I think that is a very fine principle among the population as a whole, in the healthy population, that the higher income people subsidize the lower end of the income scales, but I think it is really grotesque when you ask injured workers, who are already paying their own kind of price for being injured, to do that.

I really think that for the committee to ignore that fact--to sail blithely through this bill and accept that you are going to have one group of disadvantaged people subsidizing another--is grotesque social policy. I really think it is fundamentally wrong. You are asking the wrong people to pick up the tab. That is why my colleague, the member for Dovercourt (Mr. Lupusella), and I have so much trouble with this section.

When we started going through the new compensation system for Ontario, I thought we were in general agreement that we were attempting to make improvements in the system, and that no injured workers would be disadvantaged by the new system. I really think that. I do not think we should be looking to have any group of injured workers worse off after this bill than they were before. We know that is possible under this 90 per cent section.

I think the ministry has allowed this to happen quite knowingly. You know what you are doing; you have all the numbers, yet you have made no move to correct that. It has been raised many times, right from the beginning of the 90 per cent proposal. It was raised by people who objected to it, and that is a couple of years ago.

The ministry cannot pretend, then, that it is not aware that some injured workers will be disadvantaged by this. They know exactly what they are doing. I have always felt that the injured workers legislation is probably the most class-based legislation we have in this province, and it continues to be so.

The former Minister of Labour, Dr. Elgie, used to get really mad when I said that if there was one piece of legislation in this province that reminded me that we still had a blatant class system in Ontario discriminating against working people it was the Workers' Compensation Act. Nothing has changed to make me change my mind.

I really think that the ministry is wrong-headed in proceeding with this. Asking one group to subsidize another group that is already disadvantaged--that really sticks in my craw. I guess I am really asking whether or not the ministry is prepared to take a look at that and to think seriously about what they are doing, because I really do not believe that it is fair.

Mr. Sweeney: Mr. Chairman, we tried earlier to analyse the financial income regarding this 90 per cent and came to the conclusion that, based on a year's income tax calculations, you could justify the 90 per cent for three months, but you could not justify it beyond that.

The argument was used earlier that there are income tax advantages. When we looked at it carefully, and even had some of the financial people from the board go over it for us, that argument held true for the first three months only. Beyond that, unless you went to 100 per cent, you were definitely penalizing people through that particular system.

10:30 a.m.

The other thing we recognized was that, on a percentage scale, the number of injured workers who draw benefits beyond three months is minuscule. I think we are looking at something like four or five per cent, but I am not really sure of that. Perhaps Doug or someone might be able to put a finger on it, but my memory was that something like 96 or 97 per cent of all injured claimants were back on the job in less than three months.

We are looking, then, at those people who are on extended compensation benefits, extending beyond three months, somewhere in the neighbourhood of three or four per cent of claimants. I cannot swear by those numbers, but I think I am fairly close if someone wants to try to spot it for me. Therefore, moving at that time to 100 per cent would involve relatively few people and, obviously, a lot less money. I realize those are both factors. We had a lengthy discussion about that and I do not recall that anything was really resolved.

My question is somewhat along the lines of the previous spokesman. Has the minister, or the board in consultation with the minister, given any consideration to the possibility of leaving the 90 per cent for the first three months, which covers, as we say, 96 or 97 per cent of all claimants, but then moving to 100 per cent for anyone who is still on claims at that point?

Mr. Chairman: I recall the discussion on that point, but I also recall, in the final analysis, when it came to writing a report, the majority of the committee stuck to the recommendation.

Mr. Sweeney: I am not quarrelling with that, Mr. Chairman. I realize that the majority report stays with the 90 per cent all the way through. I am assuming that the ministry, in drafting the legislation, had some of its own thoughts to add to it as opposed to what was in the majority report.

Hon. Mr. Ramsay: It was looked at from every direction. The decision we came up with was for various reasons, including incentive for the person to go back to work to get 100 per cent. There was the less cost involved to the family with the injured worker at home, etc. This all balanced things off. We came to the decision, realizing it might not be acceptable to some of the people here, that 90 per cent was the way we wanted to go.

Mr. Sweeney: The philosophical debate about whether injured workers need an incentive has been thrashed out rather loudly and longly. I do not intend to go over it again. It is all on the record.

The second point, however, was that I thought we had arrived at a consensus or at least a near consensus that, once you get an injured worker on a longer term disability, the increased cost that generates because of the kinds of activity the injured worker is no longer able to do for himself or herself at least, if not more than at least, offsets the costs of the injured worker, such as the transportation costs, the clothing costs, the lunch costs or whatever else was included on that list.

We pointed this out about an injured worker on longer term disability. There is the very nature that he has to buy medicines at certain times which are not covered, that he has to make more frequent trips to the doctor or the hospital, and that he is not able to do things around his own home and, therefore, has to hire people.

I thought we had come to a near consensus that the lists pretty well offset one another. No one would be able to match it dollar for dollar. As we discussed the whole question, we seemed to have come to an agreement that by the third or fourth month you are probably getting to the point where there are no savings and no gains. You are probably pretty even. Some might be a little more and some might be a little less, but it would work out in the long run. That argument does not hold any longer. What we are left with is solely the question of incentive.

This goes back to earlier discussions. It seems to me that the biggest problem with incentives is that, if a worker was going to be off for two or three weeks, and if he was going to be off for another two or three days, that kind of an incentive just might have an argument. However, once we get to long-term compensation claimants, once we get to the fourth, fifth and sixth month, the whole question is rehabilitation and the availability of work he is capable of doing, because he we are usually dealing with a worker who has a permanent but partial disability. We are usually well out of the range of temporary disability. In most cases that has been pretty well cleared up after three months.

Therefore, it does not seem to me that if the basis of the ministry's decision is an incentive to return, we are not talking to the right group of people. Again, I am talking about beyond three months. I am quite prepared to accept 90 per cent for three months. That is the basis of my argument. Once you get beyond that, then you are not really dealing with the incentive factor, not in the same nature anyway. You have other reasons why they do not return to work. Secondly, it seems to me you no longer have a valid argument about offsetting costs, because they are truly offsetting and balancing by that point.

I must say I do not think your argument is as strong as you would like to convince us, unless there is something else. What you have told us this morning really is not, I do not think

anyway, valid enough to justify this. If there are others, I would be quite happy to hear them, but I do not think those arguments hold any longer.

I fully realize that longer-term claimants do have the problem of returning to work. I accept that. But at that point we are talking less of a lack of incentive than we are of a lack of availability, a lack of proper rehabilitation, or a combination of the two. The 10 per cent factor at that stage is a minimal consideration. It may not be totally impossible, but it is a minimal one. It is certainly not a first, second, third or fourth major factor.

I would ask the minister if that is the basis of his decision-making. If so, it should be reviewed.

Mr. Chairman: Thank you, Mr. Sweeney. Mr. Laughren, I do not think you totally agree with Mr. Sweeney, do you? I was wondering if we should not separate the arguments.

Mr. Laughren: First of all, Mr. Sweeney, as usual, makes his point extremely well. I think that if we felt there was any sense of give at all on the part of the minister, we would endorse, if not embrace, a compromise such as John Sweeney has proposed about the 90 days. I have not conferred with my colleague the member for Dovercourt (Mr. Lupusella), but it seems to me if that was necessary to get an ounce more of justice in the system, we would do that.

I would remind you of that another reason Mr. Sweeney did not use but which certainly is valid. After three months it is the doctor who decides when that worker goes back anyway; it is not the worker. If the worker does not have the medical evidence on his or her side, then forget it. The board cuts them off with little delay, I assure you. So that is another reason.

The minister has revealed what I had thought we had laid to rest, that old bias about incentives. I guess we have not, because the minister showed his colours this morning by saying you need that incentive to get back. I really think that is unfair to injured workers.

The minister must meet a lot of injured workers in Sault Ste. Marie through his constituency office. Maybe he does not meet as many now because his other duties preclude him from spending as much time in his office.

Hon. Mr. Ramsay: I see just as many now as before.

Mr. Laughren: Okay. I was not taking a shot at you when I said that. I just assumed your cabinet responsibilities would keep you away from the office more.

Anyway, I assume he knows a lot of injured workers. I will bet you there are not very many of them he has a gut feeling are trying to beat the system, particularly after three months, because of the necessity for medical evidence. When someone is not

getting justice, if you want to take it to the appeal, you had better have medical evidence on your side or you are not going to win an appeal.

That is one thing that is an absolute certainty. I say to every worker who comes to me, "I would be glad to help you but you have to get medical evidence." It is the first thing that is required. There is not a member on this committee who does not know that. Therefore, where is the incentive? Is it with the doctor or the injured worker? I do not understand that incentive argument. I really think the minister is not doing justice either to his own arguments or to injured workers when he uses that.

I do not know, quite frankly, what commitments have been made to the Employers' Council on Workers' Compensation in Ontario.

10:40 a.m.

Hon. Mr. Ramsay: You just got my attention. There have been no commitments made to the employers' council. Let that show on the record.

Mr. Laughren: Okay. Then there is some other reason for inflexibility is there?

I do not see you bending an inch as this committee debates this bill. Why are we here debating it? Why did you not just say, "This is the bill and this is the way it is going to be; I have decided"?

You can tell us, if you want, that you decided all by yourself, or you can admit you did it in concert with the Employers' Council on Workers' Compensation. It is up to you to tell us what you will there.

Hon. Mr. Ramsay: Probably. if the truth were known, the dialogue or the discussions with the employers' council have been less pleasant than those with the injured workers' groups.

Mr. Laughren: I am not surprised at that.

Mr. Chairman: I think it was rather evident when the employers' council was here.

Mr. Laughren: I really think there is a very neat compromise available there in what Mr. Sweeney is proposing.

By the way, I recall the Liberals put that forth before, when we were drafting our report--the 90-day clause.

Mr. Chairman: I think it is a part of our report.

Mr. Laughren: Yes. I thought it was a very neat compromise for those people who still believe there is an incentive required. They can still say that if they want and put in the 90-day clause.

After that point it is totally up to the medical profession. It is very difficult when someone gets hurt. He can go in and the doctor says, "All right, take a couple of days off and get yourself back in shape." But after 90 days, holy mackerel, it is not up to the injured worker any more, and we all know that.

I would ask whether the minister is prepared to consider that 90-day clause.

Hon. Mr. Ramsay: I have always tried to be flexible in looking at and reviewing anything I have been asked to do and I certainly will be prepared to look at it. I want to be honest, though. I doubt I am going to come back here and say it is any different, but at least I will look at it with an open mind.

We have reviewed the legislation in the other provinces, in addition to looking at it from various other aspects, as I indicated earlier. In any other province where they have gone to the net system, it has been 90 per cent. We are not out of step in that respect, though perhaps the honourable members would suggest we should be leading the pack.

I will commit ourselves to taking another look at it, particularly in the light of Mr. Sweeney's suggestions for a compromise.

Mr. Riddell: I have been listening to this debate and I wanted to ask Floyd for a clarification of his argument. Apart from the medical evidence for a return to work, I think the real determination as far as incentive is concerned is boredom. If you go and talk to the injured workers, you find they are extremely bored sitting around nursing a back pain. They would dearly love to get back to work.

I went to see one man on Sunday, a chap who had a head injury; now he is sitting in a chair and cannot walk. He does not know if he will be able to walk again. He is extremely bored; he does not know what to do with himself and would do anything to get back to work.

I do not think that incentive business really washes. Can you imagine yourself sitting around in a chair, with a back injury or some kind of an injury, not being able to do a thing? Those workers would give their eye-teeth to be able to get back to work. I think you had better reconsider that incentive bit.

The thing which puzzles me about Floyd's argument is, how is it that the higher-income injured workers are subsidizing the lower-income workers? They are still only getting 90 per cent. They are being penalized to the same extent that the low-income worker is. Why do you say the higher-income injured worker is subsidizing the lower-income worker?

Mr. Laughren: Remember, we had a chart that showed different income levels, comparing the 75 per cent versus the 90 per cent. At the low-income groups, the 75 per cent worse off. Let us look at the new system--the 90 per cent. I do not have the

figures in front of me now, but at 90 per cent the high-income people are worse off and the low-income people are better off.

Mr. Havrot made the comment the other day that he thought that was a socialist philosophy.

Mr. Havrot: I did not say that.

Mr. Laughren: Somebody did, sorry.

Interjection: Because it is.

Mr. Laughren: It is for the population as a whole, but I do not think it is appropriate for a subset of the population. That is all I am saying. I cannot remember now all the arithmetic--

Mr. Riddell: Let me get this straight. You are saying that the low-income people are better or worse off than the high-income people?

Mr. Laughren: The low-income people are relatively better off under 90 per cent than the high-income.

Mr. Riddell: So really what you are saying is that the low-income people are subsidizing the high-income people.

Mr. Laughren: No, the other way around.

Mr. Riddell: Then the low-income people are better off under the 90 per cent.

Mr. Laughren: That is correct.

Mr. Chairman: As Floyd said, at the expense of the higher-income injured workers.

Mr. Sweeney: I cannot remember the exact figure now, but up to about \$23,000, 90 per cent of net will produce a higher figure. Once you get beyond \$23,000 or \$24,000, and we were given an example of \$25,000, 75 per cent of gross will produce more than 90 per cent of net will. I think the two figures there are 90 per cent of net for \$25,000 is \$18,400, and 75 per cent of gross is \$18,900. There is a difference of about \$500. There is a cutoff point.

Mr. Havrot: It is a matter of the family, too. It benefits the man with a family, at 90 per cent.

Mr. Sweeney: This is with a family.

Mr. Laughren: This is married with two children.

Mr. Sweeney: This is married with two children. That is the figure we are comparing.

Mr. Havrot: Yes, but the larger the family, the more compensation you get at 90 per cent.

Mr. Riddell: If you give an injured worker the alternative of 100 per cent of net average earnings or the opportunity to return to work, I think, without question, the worker will opt to go back to work. That is why I think this incentive thing is a red herring.

Mr. Chairman: It is agreed then that subsection 40(1) be stood down for further response from the minister.

On subsection 40(2):

Mr. Chairman: Subsection 40(2) deals with temporary partial disability. It reads as follows:

"Where the temporary partial disability results from the injury, the compensation payable shall be,

"(a) where the worker returns to employment, a weekly payment of 90 per cent of the difference between the net average weekly earnings of the worker before the injury and a net average amount that the worker is able to earn in some suitable employment or business after the injury; or

"(b) where the worker does not return to work, a weekly payment in the same amount as would be payable if the worker were temporarily totally disabled, unless the worker,

"(i) fails to co-operate in or is not available for a medical or vocational rehabilitation program which would, in the board's opinion, aid in getting the worker back to work, or

"(ii) fails to accept or is not available for employment which is available and which in the opinion of the board is suitable for the worker's capabilities."

That is all one part dealing with temporary partial disability. Any discussion on that?

Mr. Sweeney: Yes.

Mr. Chairman: Mr. Laughren first, then Mr. Sweeney.

Mr. Laughren: Did we ever put in the definition of suitable work?

Mr. Lupusella: No.

Mr. Laughren: We did not, did we?

Mr. Sweeney: That is what we left with somebody to review--the Saskatchewan definition and the definition tabled.

10:50 a.m.

Mr. Laughren: It is very important that that be in for the purposes of this section. This is the wage difference clause.

This is to make up the difference if the person goes back. I guess it is understood that if, for example, the minister were to decide on the side of goodness and light in the previous section, the 90 per cent would be changed here as well.

Mr. Chairman: I assume that whatever answer comes back will clarify that.

Mr. Laughren: So we will not debate that again.

Mr. Chairman: I hope not.

Mr. Laughren: What is really bothering me there is that "suitable work" definition. What we are noticing now, and I am sure it is not unique to the Sudbury basin, is the question of suitable work.

I will give an example of what bothers me about how the board operates. A worker for the Eddy forestry company for many years had a couple of injuries and he simply cannot go back into the bush any more. The Workers' Compensation Board, the rehab people, tried very hard--I give them a lot of credit on this one--to get this worker another kind of job with his employer. The employer said, "We have only full-duty work available, and until he is ready to come back for that, we have no employment for this man." The doctor said, "He will never be able to go back to full employment."

Here is a situation where the man does not have a choice. He has to quit that employer because there is no hope that the employer will take him back although he has been there for years--I am not sure how many but at least 15, maybe 20.

The worker said, "I will check." He looks around and there is no job, and the board cuts him down to 50 per cent. It says: "You are not looking hard enough for a job. Are you going to move?" The worker has a home in this community, which is a very remote community south of Chapleau. That worker is in an intolerable dilemma now. Does he pack it in?

Surely the board should not be cutting him down to 50 per cent unless there is suitable employment there for that worker. They are now making assumptions that he is not trying hard enough to get suitable employment and, therefore, they reduce him to 50 per cent. That is an incredible presumption the board is making.

I worry that nothing will change with this bill. I think we have to nail down that definition of "suitable employment." This worker would dearly love to be working. He really wanted to go back to his employer on some kind of modified work, either driving a vehicle or something such as that, but they would not even consider it. They said, "No." That is why I am really concerned about this definition.

Who was assigned to come up with a proper definition for "suitable work"?

Mr. Chairman: Do you remember which clause that was under?

Mr. Sweeney: We suggested that it should be put under the definitions when we were doing section 1 because we knew that later on the word "suitable" was going to come up. It appears again under section 45, I believe.

Since we have no definition for it, and since there seemed to be a high degree of support from both injured workers and employers for the Saskatchewan definition, the impression we were left with was that the ministry was going to look at that definition and see whether it could live with it or some modified version of it. We did not get anything back; so when we were talking about the definitions we raised it again.

Hon. Mr. Ramsay: Our people are working with the board on that.

Mr. Sweeney: The other thing is that constituted one of the major points in the committee's report, that a definition for "suitable and available" be in the legislation because the injured workers in particular felt that without a clear definition of that they could be negatively affected by someone's rather capricious interpretation of what it could mean. It could have as many different meanings as you have district offices. Since there is nothing to fall back on, even if you appealed it, it had no legislative basis upon which to necessarily win an appeal. It could mean whatever anybody wants it to mean.

Mr. Chairman: Out of necessity, we will not be able to deal with this at this time until we get that definition back from the ministry. So that we do not leave everything hanging in the air, is there any other discussion on any other point here?

Mr. Sweeney: Can I raise a question? I notice that section 40 deals with temporary total disability, and section 45 with permanent disability. Permanent does not have to mean total; you can have permanent but partial.

I am asking for advice here. Is there any way in which we should be reading sections 40 and 45 in concert with each other? I am concerned about somebody falling into the cracks between those two. I am sorry; I do not have any strong basis for this. I am just raising a cautionary point.

Hon. Mr. Ramsay: Mr. Cain will respond to that.

Mr. Sweeney: Can someone help me there? I just want to be sure that by taking them in isolation we do not miss something.

Mr. Cain: Subsection 40(2) refers to payments awarded to injured workers before a permanent disability award is provided to them. This is during the time that they have been on temporary total benefit, and at some point in time perhaps, medically, it is stated that the person is now capable of modified employment. Then this section comes into play.

The other section to which you refer, section 45, is the section applied after the person is rated for permanent disability. Otherwise, they have reached what is considered to be

maximum recovery, and they are awarded a clinical pension award for that.

After that point, section 45 comes into play, and one determines whether they are able to return to their former employment, or whether they cannot return to it because of their disability and other factors such as education and so on.

Mr. Sweeney: Would it be a fair analysis to say that any injured worker would be covered by section 40 until such time as he or she qualified for section 45? There is no possibility of a gap there, is there?

Mr. Cain: That is correct. As it is worded in the current act, the legislation does not allow anyone to fall in the middle. Whether one agrees with the decisions we make is another question entirely, but the legislation provides up to pensions and after pensions.

Mr. Sweeney: Until we get to section 45, then, Mr. Chairman, that resolves my concern. As I say, I just did not want us to deal with them in isolation and find out that we had not made the bridge.

Mr. Lupusella: Mr. Chairman, I followed the argument for 100 per cent of net before, and the principle of incentive has been raised by the minister. I do not think there is incentive in clause 40(2)(a), because the worker is going back to work. I am just wondering if the minister is prepared to change the 90 per cent to 100 per cent.

There is no incentive for the worker to go back. He is already there, working with the partial disability. Are you now prepared, Minister, to change at least the 90 per cent figure to 100 per cent in this clause?

Hon. Mr. Ramsay: Mr. Chairman, this will probably come up as we proceed during the morning and afternoon, and my answer will be the same. I promised a review of the whole matter of 90 versus 100 per cent net. I will do that, and I will do it in respect of each of the sections in which it applies.

Mr. Chairman: That is very clear and precise, is it not?

Mr. Lupusella: Yes, and I thank the minister, but I hope he understands the difference between the workers who at least when they are injured are receiving 90 per cent and those in this particular clause: injured workers who are going back to work. We do not want to penalize people who will be going back to work. I hope the distinction will be made on the overall review of these sections.

11 a.m.

Another issue I would like to raise concerns injured workers with partial disabilities. Here for the first time, besides the issue of the definition of "suitable employment," I wonder if we could include another subsection--I am not sure it is appropriate

to do that under this particular subsection--to give limited right to injured workers to go back to the same type of employment.

We debated this item in the majority report. As far as I know, there is no other section that gives injured workers the right to go back to the same type of employment in which they got injured.

Mr. Chairman: I do not think this section deals with it because, as your colleague pointed out--or maybe it was you--this section deals with the worker who is already back at work, does it not?

Mr. Lupusella: Yes. But sometimes, as Floyd pointed out, there are people who are not able to perform the same type of job they used to do, because they are temporarily partially disabled. These injured workers would be completely excluded from going back to work for the same employer, as Floyd pointed out, until they recovered fully from the injury.

If we want to facilitate the process of injured workers who are partially disabled going back to the same employer, we have to give them some right to go back there instead of being completely refused by the employer where they got injured.

Mr. Chairman: It is dealt with elsewhere, is it not? Is it not dealt with where we talk about numbers of employees in a firm or something? Is that dealt with in any clause?

Mr. Lupusella: Is there any particular section that deals with this?

Mr. Cain: People returning to work?

Mr. Lupusella: We are talking about partially disabled people who are not accepted by the same employer because they have not fully recovered from their injuries. If you are really concerned about incentives and the possibility of sending injured workers back to the same employer, they should have some right to go back there or else they will be refused by the employer because they are partially disabled.

Mr. Cain: There is no section in the act that revolves around what you are talking about now--not that I can recall.

Hon. Mr. Ramsay: Mr. Lupusella, I think it is part of that package in the wage loss section, which will be dealt with next time around.

Mr. Sweeney: Mr. Chairman, can I pick up a point there? Would it be possible some time fairly soon, today or tomorrow, for the minister or somebody in his office to list for us the three, four or five--whatever it is--key items that are deliberately left out of this legislation and that are proposed to be put in at the next step? We have mentioned about three of them during the last few days, but I for one am still not sure what the minister intends to cover in the next piece of legislation.

There is the dual award system or some variation of it; you have now brought up the question of a return-to-work provision. I am sure somebody in your office has said: "This bill is not going to deal with 1, 2, 3, 4, 5--these issues. We are planning to put that in Bill 102," or whatever it will be called.

If we knew what those were, we could tailor our response to some of these sections with that fact in mind. Whether we agree with you or not is another matter.

Mr. Chairman: In other words, things that are left out of phase 1 that were recommended by the committee.

Mr. Sweeney: Yes, and those that are already in the planning stage for phase 2. You have a sense of that within your own ministry. If we knew what that was--

Hon. Mr. Ramsay: Yes. We will try to have it for you this afternoon.

Mr. Sweeney: For my purposes--I do not know about my colleagues--all I need are the headings.

Mr. Lupusella: May I add that I understand the minister's priority at this time, that he is ready to deal with Bill 101, but if we are going to leave this provision to phase 2 of the bill, we are missing the main point which should be dealt with immediately because the partially disabled people do not have an opportunity to find light or suitable jobs.

With the provision to go back to the same employer, we are facilitating the process of rehabilitation on the part of the employer, and those injured workers will have a new hope of going back with the same employer even though they are partially disabled. They will not be left out in our society with the new formulas contained in Bill 101, receiving 90 per cent of the net.

What if they cannot return to work? What if the employer is telling them, "When you are ready and fully recovered, give me a call"? In the meantime, he is supposed to go and search for a lighter job, which the present system deals with. If we are talking about improvements to the system, this provision must be a priority now.

Mr. Chairman: It is not in the bill, and the only way it can be dealt with is through an amendment from you or someone else in the committee. It is not here to be dealt with.

Mr. Lupusella: I can move the amendment, but it would be more useful if the minister were ready to proceed with his amendment now because of its importance. It does not make any sense to move an amendment that will eventually be defeated anyway. If that provision comes from the free will of the minister, maybe the whole process will be easier.

Hon. Mr. Ramsay: I think I was better off when I stayed away on Friday.

Mr. Chairman: I think it was. You cause more problems by being here.

Mr. Sweeney: Have you found out what your assistant agreed to last Friday? Wait until you get back to your desk.

Mr. Gillies: Something has been brought to my attention regarding subsection 40(3)--

Mr. Chairman: Excuse me. We are not on to that yet. We are still on subsection 40(2).

Mr. Gillies: We are still on subsection 40(2). I am sorry.

Mr. Chairman: You thought things were going along rather quickly, but no, unfortunately, we are still on subsection 40(2).

This subclause has to be stood down, at the moment, to deal with two things: the 90 per cent matter and the definition of the term "suitable." Sooner or later we will have to get caught up on our stood-down items. There are more of those than there are passed ones.

Interjection.

Mr. Chairman: Next week?

Interjection.

Mr. Chairman: The week of October 9 perhaps.

Interjection.

Mr. Chairman: We will probably not be busy that week. Right.

Subsection 40(3): "In determining the amount to be paid under clause 2(b), the board shall have regard to any payments the worker receives under the Canada pension plan, and where subclause 2(b)(i) or (ii) applies, the compensation shall be a periodic amount proportionate to the degree of earnings impairment resulting from the injury as determined by the board and subsection 45(4) applies."

11:10 a.m.

Mr. Gillies: If you look forward to subsection 45(6), we recognize in the payment of supplements the principle of some type of inflation protection: "The board shall have regard to the effect of inflation," etc.

We do not make any reference to that in subsection 40(3) with regard to temporary disability payments. I know in many cases, if not most cases, a worker would not be on temporary benefits long enough for it to be an issue, but I just wonder if there might be some merit to considering that for the odd case where they are on for quite a length of time.

Hon. Mr. Ramsay: There could be merit for including that. I would like Dr. Wolfson to take a moment to comment on that.

Dr. Wolfson: Mr. Gillies, I think the rationale you mentioned is the one that was underlying the exclusion here in that we are talking here about temporary disability as opposed to permanent disability under section 45. Therefore, the absence of inflation adjustment is very unlikely to be a material issue since there will not have been a long period of time between the earnings before the accident and the time the supplement is brought into question.

I guess there may be a few instances, however, where there is sufficient length of time, such as a year or more, where the absence of inflation adjustment becomes relevant. We should take another look at that to see whether it should mirror the language of section 45. On the face of it, I cannot see why not, but we will take a look at that.

Mr. Gillies: Thank you. I appreciate that consideration. I was just sitting here trying to think of the cases that have been through my office in Brantford, the longest period that I can remember someone being on temporary, and I do believe it is something in excess of two years. As I say, it may not help the majority but there may be some who could benefit from that.

Mr. Chairman: Are there further items on that subclause? Shall it carry?

Mr. Lupusella: No, we cannot vote on that, Mr. Chairman, because there is a reference to subclause 40(2)(b)(i). Until the minister gives us some position on the subsections, we cannot vote on them.

Mr. Chairman: I have to agree with you, yes. We will have to deal with that after dealing with others.

Mr. Lupusella: Plus the principle of the Canada pension plan, which is part of our own position. I do not know what the Liberals are going to do. I think the Canada pension plan provision is a penalty for injured workers. When the minister was absent, we raised other principles affecting the Canada pension plan, which is an income tax formula.

When injured workers receive a pension under the Canada pension plan, they are supposed to pay income tax to the federal government. I think that is a component or a tangent of the Canada pension plan that should be explored further by the minister because injured workers are going to be penalized twice.

Mr. Chairman: That has to be stood down.

On section 41:

Mr. Chairman: Section 41 reads: "For the purposes of this act the maximum amount of average earnings upon which the loss of earnings is to be calculated shall be at the rate of \$31,500 per annum."

Mr. Sweeney: To the best of my knowledge, in no previous section, and I cannot find one in the subsequent sections, was there any reference to the annual indexing of figures such as this. There are two or three places we will need to take a look at it, but this is certainly one.

Can we have any sense from the minister what his plans are in this bill, and particularly in this section, for a July 1 indexing or some other date such as October 1? I do not care what it is.

Hon Mr. Ramsay: Mr. Hess, can you answer that question?

Mr. Hess: No, I cannot.

Mr. Chairman: Certainly, I know it was not the intention of the ministry for annual indexation of this at all.

Mr. Sweeney: What drew it to my attention was noting earlier the subsection 45(6) reference to inflation. In other words, the principle is in the bill, but there is just no reference to it in this particular section.

I fully appreciate that subsection 6 is worded in such a way that having regard to it does not mean you are going to do anything, but at least the concept is there. Why not take the next step and simply build in a date? Pick any date you want, but build it in. If you are not prepared to guarantee that in fact there would be an increase, at least go far enough to say that a decision will be made by such a date so that everyone will know, one way or the other.

As it is now, and I am sure the minister appreciates it, one of the reasons we have these annual pilgrimages to Queen's Park is because of the uncertainty. I am not saying they would stop entirely if a date were established, but at least a larger number of people would know whether they were coming or going if you were to say in advance, "By such and such a date we will give you a decision."

Hon. Mr. Ramsay: I am sure you will accept my word when I say there is nothing I look forward to less than introducing amendments to the act once a year. If I were thinking strictly of my own personal comfort I would have it all laid out here and have it completely indexed and everything else, but I am not in a position to do that.

Mr. Laughren: Sure you are.

Hon. Mr. Ramsay: No, I am not.

Mr. Sweeney: It seems to me that, from a government minister's point of view, you have incorporated into the legislation the principle of having regard to the effect of inflation. That is it. I do not think there is any quarrel about that. The two things you have left out--

Mr. Laughren: Get Mr. Gillies to do it.

Mr. Sweeney: Are you ready to make another decision, Mr. Assistant Parliamentary Assistant, or whatever the blazes your title is?

Hon. Mr. Ramsay: I will stay away this afternoon if you like.

Mr. Sweeney: Of the two factors that are not included, one is the concept of an automatic indexing--

Hon. Mr. Ramsay: Which we are not going to put in.

Mr. Sweeney: We will argue. But surely there is no reason you cannot include a fixed date by which a decision will be made, either pro or con.

We will argue like blazes about it but surely there is no rationale for not saying it will be made by July 1 or October 1, or whatever is a reasonable date after the introduction of the budget. You fix it, but let us just agree to a date. January 1? I do not care and I do not think anyone else really does, as long as it is a date that everyone knows and that by that time a decision will be made, yes or no and how much. Why not?

Interjection.

Mr. Sweeney: Even there it is an unnecessary aggravation that they could get rid of.

Mr. Lupusella: You will not see injured workers demonstrating any longer in front of Queen's Park.

Mr. Chairman: This will not solve it, will it?

Mr. Lupusella: Oh, yes.

Interjections.

Mr. Lupusella: They may come for something else, but not for the increase.

Mr. Sweeney: On a regular basis, the Treasurer (Mr. Grossman) brings down a budget somewhere in April or May. You can count on it like clockwork. If he does not, it is really unusual. Why can we not fix a date? July 1, October 1, January 1; you pick it and say that on that date every year we will make our announcement, or that it will be on the day before, or it will be effective that date, or we will announce it the week before or whatever the case may be.

Mr. Lupusella: Or every four years before a provincial election in Ontario.

Mr. Sweeney: In other words, all you have to say in this section is, "To be reviewed annually on or before July 1," or "on or before October 1."

Hon. Mr. Ramsay: I suppose, and this is going to sound

like a cop-out, which is a favourite expression of a couple of persons here--

Mr. Laughren: Name names. Innuendo.

Hon. Mr. Ramsay: --those are things we would like to tidy up and spell out in the second half of the deliberations.

Mr. Laughren: That really is a cop-out. Even I will agree.

Hon. Mr. Ramsay: I admitted that.

Mr. Sweeney: Onward and downward.

11:20 a.m.

Mr. Laughren: I was absent for a few minutes because we were having coffee and cake with Jim Renwick, who is celebrating 20 years in the Legislature today.

Mr. Chairman: He should have been here.

Mr. Laughren: As a matter of fact, we might want to drop in while we pass a few sections here.

Mr. Gillies: Where is that?

Mr. Laughren: Up in Bob Rae's office.

Interjections.

Mr. Havrot: Is that the Orange Crush department?

Mr. Laughren: That is right.

Mr. Chairman: Apart from that, do you have any discussion on section 41 of the act, Mr. Laughren?

Mr. Laughren: Not on section 41.

Mr. Chairman: That is what we want to deal with right now. We stood down anything else while you were out, so it does not matter really.

Mr. Laughren: What is bothering me is--this is all section 11 of the bill; is that right?

Mr. Chairman: It is section 11.

Mr. Laughren: When you abolish--I hate even to raise this, because I have suffered more mental anguish over that once only 10 per cent, twice 10 per cent. So help me, you could count on one hand the number of people in Ontario who understand that section, and I am not one of them. I notice that this section abolishes that, abolishes section 42.

Mr. Sweeney: Where are you reading?

Mr. Laughren: Section 11 of the bill, the heavy print, "Sections 39, 40 and 41, section 42...are repealed and the following substituted therefor," which means that under the act itself, the law of the land, section 42 is being repealed and abolished.

When you read section 42, that is that once only 10 per cent, which is impossible for a normal mind to understand. It is an extremely difficult section to get your mind around; for me anyway. What bothers me is that is being repealed, but I do not see what is replacing it and I do not understand why it is being repealed.

Mr. Chairman: Can anybody answer that question?

Mr. Cain: Just from reading it, as you say, the section was a very difficult one to understand. It was also difficult to apply because, if a worker returned to work for a week or two during a 52-week interval, it took him out of being entitled to that particular adjustment.

Mr. Laughren: The legislated increase.

Mr. Cain: Yes. You will also notice that while in essence, I suppose, that section was supposed to provide an inflation adjustment for each year, it talked in terms of the periods that the injured worker was on compensation and not the years in question. You might have five per cent or whatever the inflation factor is for this year for the province.

I believe that for the first year that section says you give a 10 per cent increase. However, you might get into a situation where there was a 10 per cent inflation factor in the province and yet the person approached a year when the amount he could have his earnings inflated was only five per cent. There was an inconsistency. I believe that was the reason it was deleted.

Mr. Laughren: What happens to people then? Do they get--

Mr. Cain: It is interesting that you will note in section 45, as it stands at the moment, that there is the--

Mr. Laughren: In the existing bill.

Mr. Cain: No. I am sorry; in the proposed Bill 101, which is the old subsection 43(5). There is an opportunity for an inflation factor to be applied by the board. As far as any other inflation factors are concerned, I obviously cannot comment on that. That is the one place where it is mentioned in the act.

Mr. Laughren: I am sorry to be so thick about this. Does that mean that people will get the increase, or does it not mean that they will get the legislated increase?

Mr. Cain: There is no legislation in Bill 101 that provides an inflation increase other than in section 45.

Mr. Laughren: And that is the discretionary--

Mr. Cain: That is the one which the board is directed to deal with each year.

Mr. Sweeney: All it refers to in subsection 45(6), on page 15, is having regard.

Mr. Laughren: I am really uneasy about this. Would it be possible to break with precedent and ask Mr. Farquhar to speak to this, or not? I think it is a very difficult section for members of the committee who do not twist their minds around it on a daily basis.

Hon. Mr. Ramsay: I have no objection.

Mr. Cain: There is one comment I should make. It does not relate to the current part II of Bill 101 that we are talking about, but to part III of Bill 101. On page 30, part III of Bill 101 refers to the existing act. In subsection 133(2) it says:

"Where a worker is in receipt of temporary disability benefits on the day this section comes into force, the board shall adjust the rate of compensation by adding thereto an additional five per cent," and so on.

So, anyone injured on the day of proclamation of this particular act would get a five per cent increase, which provides everyone with it, as opposed to section 42, which means that you have to be on compensation of increments of 52--

Mr. Laughren: But that is a once only.

Mr. Cain: That is the way it reads, yes.

Mr. Laughren: What is your ruling, Mr. Chairman? I think it would be helpful to the committee members. That is my only reason for asking.

Mr. Chairman: Do the committee members wish to hear from Mr. Farquhar on this question?

Mr. Sweeney: I have no objections.

Mr. Chairman: Any concerns? Any objections? He is concerned about precedent, that this might happen again. Would you like to come to the microphone, Mr. Farquhar, to help us out on this concern of Mr. Laughren's?

Mr. Farquhar: Yes. As the minister has said, the question of inflation protection for the injured workers has basically been left for phase 2 of the process. I believe the other parties are concerned about the fact that the inflation protection which now exists in the act is actually removed by section 11 in the bill.

If you look at the beginning of section 11 of the bill, which amends sections 39, 40, 41 and 42, it says in boldface: "Sections 39, 40 and 41, section 42," and so on, and then states, "are repealed and the following substituted therefor." If you look

at the old act, which I know some of the members do not have before them, section 42 of the old act is what Mr. Laughren is concerned about. That was a very confusing section, as he says.

Section 42 of the old act allowed the board to give an inflation increase to workers on temporary disability only where they were continuously without a break in temporary disability payments for certain periods of time. It gave people a 10 per cent increase after one year, and another 10 per cent after two continuous years. After three continuous years, they received adjustments again, and so on. I believe that the last amendment we have had gives us increases up to after four consecutive, continuous years.

11:30 a.m.

That was not a very satisfactory provision because it was very common for workers to have a break in the period. Even a break of one or two weeks sometimes was enough, as Mr. Cain can probably confirm, to mean it was not continuous.

We did not like that section. On the other hand, it is certainly better to have that section than nothing at all, and we have quite a concern as to the repeal of that section without its replacement by anything else. If you look at the bill--I do not have to tell you where--section 42 will still apply for the old claims, as far as I can tell. If you go to the back, section 132 at the back--you do not have to look at it--as I understand it, section 42 will apply to the old claims; so we are mainly concerned about the new ones.

Legislative counsel thinks I am wrong here.

Mr. Revell: Mr. Chairman, perhaps I can interject. Part III, which will presumably be enacted some time in the near future, provides for the continuation of the present act with respect to the old system claims--I think that is a fair statement--but there are certain qualifications on that general statement. One of those qualifications is specifically that section 42 will be repealed, and that is under the proposed subsection 133(1).

It might be more appropriate for the ministry to speak to the next little bit that I am going to speak to, but I think subsection 133(2) is the replacement of the present section 42. It is expressed as a one-shot provision, but it does provide for everybody who is essentially receiving a benefit that would be caught by section 42 to receive a five per cent adjustment in compensation.

I believe the advantage here--and it is quite significantly different from the existing section 42--is that it does not talk about a break in service. I cannot say how the ministry will handle this situation in the future. I am a legislative counsel; I am not a policy adviser to the ministry. But that is the significant difference between the present law and the proposed law. Section 42 goes and subsection 133(2) looks after the situation initially.

Mr. Farquhar: I do not want to take up the committee's time, because I realize I am not part of the committee. We just had one more concern, which is that we have had Mr. Gillies and, I believe, Dr. Wolfson, confirm that they were willing to look at the possibility of inserting something like subsection 45(6) back into the new section 40. This would certainly be better than nothing from our point of view.

Subsection 45(6) is in the pension supplement part; this is on page 15 of your bill. It states, "The board shall have regard to the effect of inflation on the pre-accident earnings rate." Obviously, having something like that in section 40 would be better than nothing, but no one can tell what it means. It might be very useful to have some guidance from Mr. Cain or Dr. Wolfson on what that means, because from our point of view it does not give a guaranteed protection the way section 42 did.

Mr. Chairman: Okay. I think it is up to the committee to deal with that item. Thank you for trying to assist us on the other matter.

Mr. Lupusella: Am I correct that by deleting section 42 of the act and replacing it with new sections, like sections 39, 40, 41, 42 and so on, we are actually deleting the wage-loss supplement for the injured workers covered under the present act who are faced with permanent disability awards and who are going back to work? Is section 42 of the present act, at the time it will be deleted, excluding injured workers from receiving the wage-loss supplement?

Mr. Cain: No, it does not. Part III of the bill, which begins on page 30--

Mr. Lupusella: I am not talking about the new accidents; I am talking about the old injuries.

Mr. Cain: That is right, and part III, beginning on page 30, refers to existing injured workers.

Mr. Lupusella: I see.

Mr. Cain: For example, as has just been stated, subsections 133(1) and (2) remove section 42, which demands that an injured worker be on compensation X amount of time before he can have those inflation adjustments. On the contrary, whatever length of time he is on compensation at the time the act is proclaimed, he will get five per cent.

If you go on to the next page, page 31, section 135, it says that subsection 43(5) of the current act is repealed and the following substituted therefor. That is the same wording you will be reading in Bill 101 in the next few minutes. It simply changes 90 per cent to 75 per cent, leaves it at 75 per cent of gross, but it gives the worker the opportunity to have a supplement, using CPP as an offset as opposed to a bar, clearly indicating that the older worker has certain entitlements.

Yes, subsection 43(5) of the current act has been repealed, but it has been replaced with something that is going to be for new injured workers under Bill 101 as well.

Mr. Lupusella: Okay, that replaces it. I have been talking about wage loss for the present injured workers, not the new ones. What about supplementary pensions?

Mr. Cain: On page 31, under subsection 135(5), existing injured workers, on the date of proclamation of Bill 101, will be entitled to their supplement. If they are receiving CPP, it will be an offset, it will not be a bar, and older workers will be entitled to a supplement up to the equivalent of old age security. That section has not been removed. One might say it has been broadened a bit.

Mr. Lupusella: That means we are really forcing injured workers to move with the new act in order to become eligible for the extra benefits which are deriving from Bill 101. Am I correct?

Mr. Cain: Existing workers, for this particular section you are referring to, do come under the new bill, the new act, but just from an administrative standpoint, I think it is a little broader than the current subsection 43(5). In effect, the injured worker is gaining a little bit by going under the new section, I would think.

Mr. Lupusella: But in order to become eligible or in order to implement the new section of the act, they have to move within the new act. It is not something which becomes automatic.

Mr. Cain: No. The section of the current act is repealed and replaced by this one. They stay in the current act. It is just that the section of the current act is repealed.

Mr. Lupusella: What about their pension? What is happening to their pension?

Mr. Cain: Their pension remains as it is today.

Mr. Chairman: Are you satisfied with that, Mr. Lupusella? We stopped in the middle of section 11 of the bill, dealing with section 41 of the act. That is what we were talking about. That is the one we were dealing with and we got off on other parts of this. Shall section 41 carry?

Mr. Lupusella: No. I was on the list for section 41, which was the ceiling. We have been talking about different items and I did not have the opportunity to raise the issue which is contained in section 41.

Mr. Chairman: We are still kicking it around. Go ahead, Mr. Lupusella, on section 41.

Mr. Lupusella: It is now set at \$31,500 per annum. To be consistent with our position and the position taken by Professor Weiler, the average industrial wage in 1980 was \$40,000, so we are not supporting this.

Mr. Laughren: It is \$20,000.

Mr. Lupusella: We do not know what it is in 1984. Can we get some answers about the average industrial wage in 1984?

Mr. Laughren: Can I jump in?

11:40 a.m.

Mr. Chairman: Why not? Everybody else is. Join in.

Mr. Laughren: I do not know how often we are going to debate this section--

Mr. Chairman: Neither do I. I would like to get it disposed of now so we do not have to debate it again.

Mr. Laughren: --but I guess it needs to be said again, since the minister is remaining inflexible. It goes against what I thought was the Tory commitment to the work ethic to penalize people who are at the upper end of the scale here in terms of bonus miners, construction workers and so forth. I always thought you believed the work ethic was good, rah rah, second only to the commitment to the family--

Mr. Gillies: The Queen.

Mr. Laughren: And the Queen, yes. Therefore, you would not want to penalize someone who engaged in productive work by putting a ceiling that may very well be substantially below what they are earning. For that reason, I have always had trouble understanding where the government is coming from on this section of establishing this kind of ceiling.

I know where we part company is that I have this gut feeling no injured worker should ever be penalized financially for being injured on the job in a no-fault system. That is where I part company with the minister. The minister can live with penalizing financially people who get hurt on the job. Talk about double jeopardy. This is a classic example.

I have never had it explained it me why the minister thinks it appropriate financially to penalize injured workers. If I could get an answer to that, I would sleep more easily.

Mr. Chairman: But still vote against the section.

Mr. Laughren: No, not if the minister can convince me, if he can even give a plausible response.

Mr. Chairman: I think the minister has responded to this question on a few occasions--in fact, even while you were out having cake with Mr. Rae.

Mr. Laughren: No, no. The last time we debated this was in Bill 99. The minister said, "We will deal with that in Bill 101 when we debate it in the fall." That is what he said. The Speaker said: "That is all right. Do not worry. You can debate this on

another bill." I never understood the Speaker's ruling, but the minister seemed happy with that ruling at the time. I wonder if he can now enlighten us.

Mr. Chairman: I believe--

Mr. Laughren: Would you let the minister answer, Mr. Chairman?

Mr. Chairman: Minister, can you enlighten the member?

Mr. Laughren: Why are you being so rude to the minister?

Mr. Chairman: Can you enlighten the member in any way, shape or form?

Mr. Laughren: I know that is a difficult task.

Hon. Mr. Ramsay: It is not difficult to enlighten the member because he has a very open mind.

Mr. Laughren: Right on, and I am very flexible.

Hon. Mr. Ramsay: He is very flexible. He is anxious to hear the other side of every argument, I am sure.

Mr. Laughren: Exactly.

Hon. Mr. Ramsay: But I do not think I am going to accomplish very much here today except perhaps to disturb you, and I would not want to do that. The \$31,500, frankly, honestly, is a judgement call. We have to try to balance the benefits to the workers with the cost involved in the system.

We felt that \$31,500 was a reasonable compromise between those two points. This is something we agonized over, and this is the figure we came up with. We set \$31,500, and I am not prepared to adjust my thinking at this time on that point.

Mr. Laughren: Do you not think you are breaking the understanding of the tradeoff between no-fault and compensation for workers? Surely that was the understanding, that people would get compensated if they got injured on the job and in return there would be no lawsuits against the employers.

You cannot have it both ways. You cannot say, "All right, there will be no lawsuits against employers and we will give you only part of what you have coming to you when you get injured on the job." That is for all workers because you do not pay 100 per cent of net.

You are really breaking an agreement that was made many years ago. You are not being honest to the principle of the compensation system when you do that, when, first of all, you do not pay 100 per cent net and, second, when you establish an arbitrary ceiling that is below what some workers earn.

Hon. Mr. Ramsay: What would have happened if we had not brought in Bill 101? You would still be dealing with a rate of \$26,000 and raising it by about five per cent every year and so on. I think this is a marked improvement.

Mr. Laughren: The ceiling is higher than it was; that is correct.

Hon. Mr. Ramsay: I would say it is a marked improvement. It puts us into the middle, the upper level of the other provinces. We were low in comparison, and this certainly brings us into the middle of the pack, perhaps even higher than the middle.

Mr. Laughren: But does it not bother you that you are still penalizing some workers?

Hon. Mr. Ramsay: I am not prepared to answer that question.

Mr. Chairman: I do not think it is necessary to answer that question.

Mr. Laughren: What do you mean it is not necessary to answer the question? It is legitimate question.

Mr. Chairman: I do not think it requires an answer if the minister is not prepared to answer it.

We have section 41 before us. Shall it carry? Those in favour of section 41 so signify.

Mr. Sweeney: Excuse me, Mr. Chairman. I am sorry to interfere at this stage, but did I or did I not get the impression that there may be reconsideration of a set date, which would be incorporated in this?

Dr. Wolfson: Yes.

Hon. Mr. Ramsay: No, it would not be in this section. I committed myself to looking at it, but if we did decide to make a change, it would not be in this section.

Mr. Sweeney: This section deals with the amount only, not the timing.

Hon. Mr. Ramsay: Right.

Mr. Chairman: All those in favour of section 41? Opposed?

Section 41 agreed to.

On section 42:

Mr. Chairman: Section 42 says:

"(1) The minimum amount of compensation payable for temporary total disability shall be,

"(a) \$10,500 per annum where the net average earnings of the worker at the time of the accident are equal to or exceed \$10,500 per annum; or

"(b) the net average earnings of the worker at the time of the accident where the net average earnings are less than \$10,500 per annum."

Mr. Lupusella: Mr. Chairman, I do not understand, along with other figures, a figure such as \$10,500. How did the minister decide to establish such a minimum? Is it based on the minimum wage or set just above the minimum wage in Ontario? Can we get some explanation of the \$10,500 per annum?

In the past we have made the argument that even workers who are on the low minimum wage are faced with serious disabilities for the rest of their lives, and I do not understand why they should be penalized, unless I can have a clear indication of how this figure has been chosen.

Mr. Chairman: Can anybody answer that for Mr. Lupusella?

Mr. Gillies: In the absence of the minister, I can just say the calculation is based on 50 per cent of the average industrial wage, \$21,000; \$10,500 is half of that.

The other thing to keep in mind is that it is much higher, of course, than the minimum wage and represents about a 50 per cent increase over the figure in the old act. That is how it is calculated.

Mr. Sweeney: Where is the comparative figure in the old act, by the way?

Mr. Cain: Page 26, section 44.

Mr. Sweeney: The \$170 a week?

Mr. Gillies: It says:

"(i) \$179 a week, where the worker's average earnings were not less than \$179 a week, from July 1, 1983, and

"(ii) the amount of the worker's earnings, where the worker's average earnings are less than \$179 a week, from July 1, 1983."

11:50 a.m.

Mr. Laughren: About \$9,000 a year.

Mr. Gillies: It is \$9,300.

Mr. Cain: It is \$9,308.

Mr. Lupusella: Mr. Chairman, I want to thank the parliamentary assistant for the explanation. The point is that there is no automatic indexing involved. We do not know when the ceiling is going to be increased.

Even though we realize that \$31,500 per annum is quite generous, I think at least 35 per cent of the total labour force in Ontario is working for the minimum wage, which means that if we do not get a clear explanation from the ministry as to when the ceiling is going to be increased, we are penalizing a good number of workers if they ever get injured.

I think the point raised by the member for Kitchener-Wilmot (Mr. Sweeney) is very significant and important. We need a section to be incorporated within Bill 101 that establishes the time when the ceiling has to increase, or else 35 per cent of the total labour force will be left out if they ever get injured.

Mr. Chairman: I assume the minister's commitment to take a look at that, and that it would be brought in under another section, answers your question too.

Mr. Gillies: The best figure I can get is that if the compensation were based on minimum wage as opposed to this minimum, it would be only about \$8,000 a year. So this does represent quite a substantial improvement.

Mr. Lupusella: I understand, but if you deal with serious accidents, injured workers are still penalized because the minimum ceiling has been established at \$10,500. That is my concern. Even though there is an improvement in comparison with the minimum wage, I think the people who are seriously injured will be penalized in relation to the degree of their disability. So I am disputing the figure unless I get a clear indication that the minister will be prepared to increase the ceiling once a year.

Mr. Chairman: You have a clear indication that he is going to look at that.

Mr. Lupusella: It should be spelled out in the act.

Mr. Gillies: Yes, he will be looking at that.

Mr. Laughren: In view of the fact that the minister did not agree to raise the ceiling above \$31,500 or to remove any ceiling under section 41, does the parliamentary assistant think an amendment would be acceptable that would read as follows:

"42(1) The minimum amount of compensation payable for temporary total disability shall be...(b) the net average earnings of the worker at the time of the accident where the net average earnings are less than \$31,500 per annum"

Mr. Chairman: Yes or no, Mr. Gillies?

Mr. Gillies: In a word? Can I not even couch this in the nicest possible terms?

Mr. Laughren: That would be civilized compensation.

Mr. Gillies: In a civilized manner then. I think if the minister were here he would indicate that we feel this clause as drafted here represents a substantial improvement and leaves the lower-income workers in a much better position than they otherwise would be. I would think we would be inclined to stay with it.

Mr. Laughren: You express yourself much differently when the minister is behind you.

Mr. Lupusella: I want to hear the minister, Mr. Chairman.

Hon. Mr. Ramsay: That is exactly what I would have said.

Mr. Laughren: You may even have said it.

Mr. Lupusella: It is very serious. The minister will understand that the \$10,500 minimum ceiling established by Bill 101 is an improvement in comparison with or vis-à-vis the minimum wage in Ontario. We also understand that injured workers are faced with serious disabilities.

I want to go back to the point raised by the member for Kitchener-Wilmot, that if we do not have an automatic increase we are penalizing a good portion of injured workers. I would like to get a clear indication from the minister of what he is planning to do in relation to that.

Mr. Chairman: Does the minister have a response for the member?

Hon. Mr. Ramsay: I do not think I could add anything that would please him. It is a 15 per cent increase.

Mr. Laughren: Do not prejudge him.

Hon. Mr. Ramsay: No, I should not do that. It is a 15 per cent increase. It is 20 per cent above the minimum wage. It is 50 per cent of the average industrial wage. Those are just figures on a piece of paper. I realize it is not money in a person's pocket. But as Mr. Gillies said earlier, it is a figure we arrived at that we thought was a marked improvement over the previous one.

Mr. Sweeney: One of the reasons given to us for settling on this figure was that it is 50 per cent of the average industrial wage. Would the minister be prepared to consider a clause (c) that would read something like, "In no case will the amounts stated in clauses (a) and (b) above be less than 50 per cent of the average industrial wage"? We would be assured at least that the ratio would not drop any further.

Mr. Lupusella: Agreed? Carried.

Hon. Mr. Ramsay: No. I do not want to build the average industrial wage into the act; that is for sure. It is something that can be looked at on an ad hoc basis when we look at adjustments to the benefits. But other than that, I would not

consider adding that clause.

Mr. Lupusella: Do you realize that at a certain point your position will not stand any longer, say in four or five years? The present position of \$10,500 is based on 50 per cent of the average industrial wage. I am sure that in three or four years that position will not stand any longer.

Mr. Laughren: He likes the yearly debates.

Hon. Mr. Ramsay: We went through that a little earlier, Mr. Lupusella, but the answer to your question is that it could be reviewed at the time of the annual--

Mr. Lupusella: Then why do you not accept Mr. Sweeney's proposal?

Hon. Mr. Ramsay: As Mr. Laughren said, I look forward to those occasions with such relish that I do not want to miss out on them.

Mr. Sweeney: May I ask another question for information purposes? In terms of these figures that come up, has there been an agreement in the ministry or at the board that the average industrial wage will be the benchmark as opposed to the inflation rate or the cost of living? Is there any agreement at all as to which figure will be used?

Hon. Mr. Ramsay: Perhaps I left that impression when I brought along those figures a moment ago. I realize that one of the figures I gave you was incorrect, and I would like to take this opportunity to correct it. I said it was a 15 per cent increase; it is actually a 13 per cent increase. I said it was about 20 per cent higher than the minimum wage, which is correct. I also said it was approximately 50 per cent of the average industrial wage, but I am not trying to tie it in. I did not report that figure as an indication that we are tying it to that.

Mr. Sweeney: I am not trying to hold you to that. Obviously, you do not intend to be held to that figure at this point. What I am trying to get at is, can we be privy to whatever benchmark of your ministry seems to come up with these figures? Has it now settled on the average industrial wage, or the cost of living or the inflation rate? Is there any single indicator or any single index that we can understand which is going to be the point you are looking at?

Hon. Mr. Ramsay: How about a combination of all those?

Mr. Sweeney: That makes it difficult.

Hon. Mr. Ramsay: In effect, that is what we have done.

12 noon

Mr. Chairman: Shall subsection 42(1) of the act under section 11 of the bill carry? Carried.

Subsection 42(2): "The minimum amount of compensation payable for a temporary partial disability shall be a proportionate amount of the minimum compensation payable under subsection 1 in accordance with the impairment of earning capacity."

Mr. Laughren: Does this mean the meat chart is gone? Does this mean that from now on--I see heads shaking already--impairment of earning capacity will now be the determination for temporary benefits and not the meat chart?

Mr. Cain: The permanent disability clinical rating of the individual has no bearing on this particular point, because this is referring to temporary partial disability.

Mr. Laughren: Maybe we could amend it to say: "All partial disability."

Mr. Cain: I am sorry, this refers to temporary as opposed to permanent partial disability.

Mr. Laughren: Right. I am saying that maybe it could be amended. Was that an error in drafting? You did not do the drafting.

Mr. Chairman: Hearing no amendment--

Mr. Laughren: We want to redraft the words.

Mr. Lupusella: We need more clarification. I have a further question. We are dealing with the permanent partial disability workers under this subsection 42(2), right?

Mr. Cain: We are not. We are dealing with temporary partial disability and not permanent. Permanent is in another section.

Mr. Lupusella: Temporary partial, okay. What is the minimum amount going to be? Is it going to be \$10,500, or what?

Mr. Laughren: Give me an example of this, will you?

Mr. Cain: You have the minimum cited under clauses 42(1)(a) and (b); that is for paying temporary total disability. If, by chance, the person is only partially disabled and one were to pay 50 per cent, then you would pay 50 per cent of either of those figures as explained in clauses (a) or (b).

Mr. Lupusella: Let us go back to section 41 regarding an injured worker who used to make \$31,500 per annum, and the temporary total is based on 90 per cent of the net. If at a certain point the board decides the injured worker is no longer temporary total but is temporary partial, what amount will he be getting?

Mr. Cain: It will be 50 per cent of what he was receiving for temporary total disability.

Mr. Lupusella: Okay. Going back to subsection 42(2), I do not understand the relationship between the impairment of earning capacity and the way our benefits are going to be set up based on the principle you enunciated, which should be half of 90 per cent of the net, unless there is something in this subsection which gives more power to the board to do something different.

Mr. Cain: It does not give any more power.

Mr. Lupusella: Why do we need the subsection?

Mr. Cain: Because you have clause 40(2)(b), "Where the worker does not return to work, a weekly payment in the same amount as would be payable if the worker were temporarily totally disabled." That is no problem. He would get the minimum as described, "unless the worker fails to co-operate," etc., or "fails to accept" etc. That is where it may well be that the worker's compensation possibly would be reduced to 50 per cent.

If one did that, and we were paying him \$10,500 a year, or on the basis of that because that was the minimum, then we would pay 50 per cent of \$10,500 a year. You would just take 50 per cent of that amount of money.

Mr. Lupusella: Why do we need that? I cannot understand that, because we are confusing two sets of workers. There are the workers who are making \$31,500 per annum; of course, if they fall into the category of being temporarily partially disabled, it will be half of the 90 per cent of the net. We are also dealing with the other group, which are not making \$31,500.

The principle involved at the end of subsection 2 is not understood by me. Why do we need the impairment of earning capacity involved when it is simple mathematics? It would be half of 90 per cent of net if he has a temporary partial disability.

Mr. Cain: It is possible that one is trying to identify to some degree their impairment of earning capacity based on 50 per cent, which I use as an example. It could be 75 per cent. It is rarely under 50 per cent, though it could be.

It is exactly the same for the worker earning \$31,500 where you are paying 90 per cent of that or the one earning \$20,000 where you are paying 90 per cent of that. If you are going to reduce their compensation, you reduce it, say, 50 per cent.

The same goes for the person receiving the minimum; his compensation will also be reduced by half.

Mr. Lupusella: If I understand it correctly, when a person falls under the principle of being temporarily partially disabled, he cannot get less than \$10,500 per annum. Is that what this subsection says?

Mr. Cain: No. It says he cannot receive less than \$10,500 for temporary total disability where his net average earnings at the time of the accident are equal to or exceed

\$10,500 or the net average earnings of the worker at the time of accident where the net average earnings are less than \$10,500.

If you work out the net average earnings and they are less than \$10,500, then you would give him the \$10,500, but you would not take 90 per cent of net. You would give him whatever it is he receives. This takes away the idea of applying 90 per cent of net. It is not appropriate.

Mr. Lupusella: So injured workers receiving the minimum of \$10,500, when the level of benefits is cut to 50 per cent, would then be receiving \$5,250?

Mr. Cain: That is correct.

Mr. Chairman: Shall subsection 42(2) carry? Carried.

Subsection 42(3): "The minimum amount of compensation payable for permanent disability shall be computed in accordance with sections 41 and 45, but the amount of such compensation shall not be less than,

"(a) for permanent total disability in one claim, \$10,500 for annum; and

"(b) for permanent partial disability, an amount proportionate to that mentioned in clause (a) in accordance with the impairment of earning capacity."

Mr. Laughren: Why was this section necessary?

Mr. Cain: To provide minimums for people receiving clinical permanent disability awards. In this case, no matter what their earnings prior to the accident, if they were less than \$10,500, and they could have been much less than that, if they are permanently totally disabled, they will receive \$10,500 a year as their 100 per cent clinical permanent disability award.

If, by chance, they are only 50 per cent disabled, they will receive \$5,250 a year. That is the floor.

Mr. Lupusella: To raise another question, is there a possibility that under subsection 42(2) injured workers can get, as a result of the principle of impairment of earning capacity, less than 50 per cent?

Mr. Cain: There is nothing in the act that states the minimum percentage one can pay an injured worker. However, in actual practice 50 per cent is usually the base. I would not say it is always the base. That might be somewhat of an exaggeration, but in almost every case, we never go below 50 per cent.

12:10 p.m.

Mr. Lupusella: Is this a matter of policy? With this new particular subsection 2 dealing with temporary partial disability, will the board now have the authority and the power to analyse the

impairment of earning capacity, therefore cutting the level of benefits below the 50 per cent mark as well?

That is how I read subsection 2.

Mr. Cain: I would agree that you could read "impairment of earning capacity" in that way. Perhaps I should enlarge on my explanation.

There are times when an injured worker is offered work that the board believes the person is capable of doing, and we will ask the employer, "What would you have paid this worker had he returned to work?" When we get that information, then we actually calculate the difference in earnings.

You have to work on a difference in earnings and not usually on a percentage in that case. You take the earnings the person would have earned had he returned to work compared to the pre-accident wage and take 90 per cent of it.

The way this section is worded it does not really talk in terms of that. It talks about "temporary partial disability shall be a proportionate amount." While that is usually a percentage disability and we would not take into account this idea of earnings lost, I cannot deny that with those words there, one might; yes, one might.

Mr. Lupusella: Can we get a clear explanation from--

Mr. Chairman: No. I am sorry--

Mr. Lupusella: It is very important.

Mr. Chairman: I know it is important, but we have to--

Mr. Lupusella: We are returning to the status quo of 1975 when the injured workers were cut off because of such principles. If the 50 per cent principle is maintained when injured workers are temporarily partially disabled, now if the board would consider the impairment of earning capacity, injured workers can get below the 50 per cent figure.

Am I correct? Maybe we could ask the legal counsel to interpret this subsection.

Mr. Chairman: Do you have an answer to that?

Mr. Revell: I am afraid I do not.

Mr. Lupusella: Am I right or wrong? I would like to know. That is what I am afraid of. If we are now putting in the principle of earning capacity within this section, when a person is temporarily partially disabled, instead of 50 per cent of the net income the board might decide it is less because the degree of his disability is not high enough and the injured worker can perform a different type of job which is not a disability to a temporary partial disability position.

Mr. Laughren: It would be almost like anticipating a permanent award where a person could be on a 50 per cent temporary, but when they assess that worker for his permanent partial disability pension, that might be 15, 20 or 25 per cent. In that example I used earlier about the forestry worker, I am very much afraid that is what is going to happen to him.

Mr. Cain: In this case, however, you will notice that impairment of earning capacity, under the permanent disability section--and I have to emphasize it has nothing to do with this section--the impairment of earning capacity is the clinical disability.

If one wanted to be consistent in the act and read that there, then back here impairment of earning capacity is basically the clinical disability. This worker is 50 per cent disabled; so we will pay a 50 per cent permanent partial disability payment.

Mr. Laughren: What bothers me about the section is that you could read it in a very favourable way. If you were a layman picking it up, you could read it as saying, "It means that whatever income he is losing as a result of the injury is what is replaced." You could give impairment of earnings a very liberal interpretation, but what is really perverse about it is the way it could be applied.

Mr. Cain: I did say that the least they would get, if you were to compare it against the job they were offered and did not take, it is true, it would be the earnings they were losing. It would be the difference between what they could have earned had they gone back to work and their pre-accident earnings. It would be no less than that. I am also saying that it can well be interpreted as the clinical disability for temporary compensation purposes. If they are only 50 per cent disabled, they get 50 per cent of compensation.

Mr. Laughren: Could I ask a question about clause 42(3)(a)?

Mr. Chairman: Yes. That is what we were supposed to be discussing when we slid off.

Mr. Laughren: If someone is working part time in a supermarket for 18, 20 or 24 hours a week, whatever it is, how does that affect it?

Mr. Chairman: It is prorated, is it not? It is raised to whatever the weekly salary would be. Am I right or wrong?

Mr. Cain: When someone is working part time you pay on the basis of their actual earnings. Are you referring specifically to subsection 42(3) on page 12 for permanent disability?

Mr. Laughren: Yes.

Mr. Cain: It states that you cannot pay a pension for 100 per cent disability of less than \$10,500 and there is no reference to any other section, so you would pay.

Dr. Wolfson: Even for part-time workers.

Mr. Laughren: If a worker works 20 hours a week, even though he might only be earning \$5,000 a year, he gets \$10,500.

Dr. Wolfson: That is correct.

Mr. Chairman: Shall subsection 42(3) of the act under section 11 of the bill carry? Carried.

We are now on subsection 42(4). "The minimum amount of compensation to which a spouse and child or children of a deceased worker are entitled under subsection 36(2) shall be \$10,500 per annum." Shall it carry? Carried.

Mr. Chairman: We are now on subsection 42(5). "The minimum amount of compensation to which a spouse of a deceased worker is entitled under subsection 36(3) shall be \$10,500 per annum multiplied by the percentage prescribed therein."

Mr. Lupusella: On subsection 42(4), are we talking about the survivor spouse or what?

Mr. Chairman: Spouse and child of the injured worker--which we passed, incidentally.

Mr. Lupusella: I think \$10,500 is not enough to cover the life of an injured worker, so I am against that.

Mr. Chairman: Okay, thank you. Would you like to discuss anything under subsection 42(5), which we are discussing?

Mr. Lupusella: It is the same.

Mr. Chairman: Is that the same principle, the same argument?

Mr. Laughren: The difference is the percentage described therein.

Mr. Sweeney: That is the 20 to 60.

Mr. Chairman: That is the sliding scale.

Mr. Laughren: I see.

Hon. Mr. Ramsay: That excludes the lump sum. That is the ongoing pension.

Mr. Laughren: Right; it would be a pretty small pension, would it not?

Mr. Sweeney: Since you have used \$10,500 as an almost absolute floor everywhere else, why would it not be a floor here too? You seem to be saying \$10,500 in all other circumstances.

Dr. Wolfson: I think you will find that \$10,500 is not the absolute floor. It is prorated, for example, in temporary partial disability or indeed in permanent partial disability. The minimum is prorated by the amount of the award, so this is consistent in terms of the spousal continuing pension of prorating it for either 60 or 40 per cent or whatever the continuing pension may be after the lump sum is paid.

Mr. Sweeney: Dr. Wolfson, I think if you look at the other places where it is prorated, it is only when we are dealing with temporary. Whenever we are dealing with permanent, I do not think it is prorated.

Dr. Wolfson: With respect, clause 42(3)(b) at the top of the page states, "...an amount proportionate to that mentioned in clause (a) in accordance with the impairment of earning capacity." That is for permanent disability.

12:20 p.m.

Mr. Sweeney: Here again, though, in clause 42(3)(a) you are dealing with permanent total and in clause 42(3)(b) you are dealing with permanent partial. In subsection 42(4) you are dealing with something which is total, and really subsections 42(4), 42(5) and 42(6) all deal with something which is in effect total. There is nothing partial about it.

Dr. Wolfson: Both.

Mr. Sweeney: That is the point I am trying to get. Whenever there is a partial, temporary element to it, the prorating makes some kind of sense, but when we are dealing with something which is in effect permanent, there are no parts to it any more. In other words, the guy is dead or he is not. It cannot be more permanent than that.

Dr. Wolfson: If I might, Mr. Chairman. I think the analogy is that in the case of the survivors' benefits, the total award is given to survivors with dependant children. Where there is no dependant child, the total award is reduced to be a partial, if you like, continuing pension based on age. Where there is no spouse at all, again there is a proportionate reduction from the total award which is attached to the family unit as a whole. That is really how the analogy between the survivor's benefit holds with the awarding of permanent partial or temporary partial disability payments.

Mr. Sweeney: I hear what you are saying, but I do not agree with your analogy. On that, obviously we disagree.

I can philosophically follow the idea of something which is partial or something which is temporary being prorated. Once you get into the concept of permanence or totality then at that point I do not think it should be prorated, there should be an absolute floor. That is where I would disagree with subsections 42(5) and 42(6), I guess, as I am referring to. I think they should have \$10,500 as an absolute floor because they have the criteria of being permanent and total. They are neither partial nor temporary.

Mr. Chairman: Are there any questions on subsection 42(5)?

Mr. Laughren: I think what is bothering me is some sneaky things about this bill that have the potential to further abuse injured workers, as my friend Mr. Lupusella was talking about. It is almost like that section under the pensions where you get 10 per cent at age 40 and a one per cent decrease for each year of age under 40.

If you look at the level of those pensions, putting aside the lump sum which might be used to pay off a house or whatever, you take 40 per cent and reduce it by one per cent for 20 years and you end up with a pretty miserable pension for what looks at first blush to be good. It does not end up being as good. When you look at some of these things that Mr. Lupusella was talking about, you end up with the same sinking feeling that maybe what appears is not always the real thing.

I know why it is one per cent less for each year under 40. Obviously, the older the person the less time they will collect the pension and the younger, the more likely they are to collect it for a longer time. I understand the motivation, but I do not like it.

Mr. Chairman: Are we prepared to vote on this? Shall subsection 42(5) carry?

Those in favour shall signify. Those opposed?

Subsection 42(5) agreed to.

On subsection 42(6):

Mr. Chairman: Those in favour shall signify. Those opposed?

Subsection 42(6) agreed to.

Mr. Laughren: I think we won that one.

Mr. Chairman: Not in my determination, I am sorry. Do you challenge the chairman's eyes?

It might be an appropriate spot to break right now. It is just about the time to recess in any case. We will be back at two o'clock and slide right through this.

The committee recessed at 12:25 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT
WORKERS' COMPENSATION AMENDMENT ACT
MONDAY, SEPTEMBER 10, 1984
Afternoon sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)
Gillies, P. A. (Brantford PC)
Havrot, E. M. (Timiskaming PC)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Kennedy, R. D. (Mississauga South PC)
Laughren, F. (Nickel Belt NDP)
Lupusella, A. (Dovercourt NDP)
Mancini, R. (Essex South L)
Riddell, J. K. (Huron-Middlesex L)
Sweeney, J. (Kitchener-Wilmot L)
Yakabuski, P. J. (Renfrew South PC)

Substitution:

Kolyn, A. (Lakeshore PC) for Mr. Villeneuve

Also taking part:

Gillies, P. A. (Brantford PC), Parliamentary Assistant to the
Minister of Labour

Clerk pro tem: Carrozza, F.

Staff: Revell, D., Legislative Counsel

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation
Board

Hess, P. A., Director, Legal Services Branch

Welton, I., Senior Liaison Officer, Policy Secretariat, Program
Analysis and Implementation

Wolfson, Dr. A. D., Assistant Deputy Minister, Program Analysis
and Implementation

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday, September 10, 1984

The committee resumed at 2:12 p.m. in committee room 2.

WORKERS' COMPENSATION AMENDMENT ACT
(continued)

Resuming consideration of Bill 101, An Act to amend the Workers' Compensation Act.

Mr. Laughren: Mr. Chairman, just before you start, with all our demands on the minister to be flexible I wonder if we should not clarify things. You know Charlie Brown in Peanuts? It took him a long time to discover the difference between wishy-washy and flexible. There is a difference, and I would not want the minister to think that if he showed some flexibility we would consider him wishy-washy.

Mr. Chairman: Thank you very much, Mr. Laughren. I am sure the minister will appreciate hearing those remarks.

Mr. Laughren: I am trying to be helpful.

Hon. Mr. Ramsay: It is really nice to know.

Mr. Chairman: The minister does have some responses for us.

Hon. Mr. Ramsay: I have just one concerning a comment Mr. Sweeney made this morning about phase 2 of workers' compensation reform. I will just read this into the record and then I will pass it along.

Mr. Sweeney, you can make any notes you want from it, so you do not have to worry about that. Maybe you could then pass it over to Mr. Lupusella.

I was asked this morning to outline the ministry's plans regarding the second phase of workers' compensation reform. At this stage, the issues to be addressed mainly revolve around those items outstanding from the 1981 white paper which were not dealt with in Bill 101.

They include: reform of the permanent disability pension scheme, particularly the question of basing those pensions on the worker's wage loss; the means of adjusting benefits on a periodic basis to cope with the impact of inflation; the question of reinstatement or re-employment rights for insured workers; and other means of improving the effectiveness of board rehabilitation programs and retirement income loss benefits for pensioners over 65 years of age.

Phase 2 will be concerned with examining the options on the

above issues, including but not necessarily confined to the particular proposals made in the white paper. The list I have given is not necessarily exhaustive, and other items may be added as the review proceeds.

Mr. Lupusella: Is this a rigid procedure, or are you going to be flexible and incorporate other items which will be raised in the near future?

Hon. Mr. Ramsay: I might be flexible about adding things to that list. Is that what you meant?

Mr. Lupusella: No.

Hon. Mr. Ramsay: Also, with respect to Mr. Sweeney, there was another matter he raised this morning which Mr. Cain is prepared to address now. Before Mr. Cain starts, there have been several items stood down--

Mr. Chairman: Laid down.

Mr. Laughren: That is what we were afraid of.

Hon. Mr. Ramsay: I am not particularly happy about that circumstance, because it delays an orderly review of the whole bill. We would hope to be able to address those, perhaps by Wednesday of this week. We need another day.

We are trying; I do not want you to think that I am deliberately holding them back. The opposite is true. I would like to get them on the table, and then decide whether I am going to be flexible or wishy-washy.

Mr. Chairman: Or hold the line.

Mr. Lupusella: Rigid.

Hon. Mr. Ramsay: That is right. Rigid, flexible or wishy-washy. I have three options.

Mr. Cain: Yesterday, Mr. Sweeney asked if words could be introduced into subsection 36(15), on page 10 of Bill 101, which would ensure that there was some type of minimum. That was generally the approach suggested.

In looking at it, we were wondering whether it would be suitable to include, somewhere in that subsection, the notion that the minimums as outlined in this bill apply--that is, the minimums under section 42.

Mr. Sweeney: This is where there is a split, is it?

Mr. Cain: Yes.

Mr. Sweeney: What you are suggesting is that, however it is split, none of the parties would receive less than the \$20,000 lump sum payment or the 20 per cent pension. Are those the minimums?

Mr. Cain: This would only apply to the pension aspect of it. The lump sum would stay as it is. The minimum sections of the act deal only with \$10,500 as an ongoing compensation.

Mr. Sweeney: In the sections dealing with surviving spouses, the age range covers a lump sum range between \$20,000 and \$60,000, and a percentage range between 20 and 60. Were those two 20s that you were talking about as being the minimums built into this, or was it the \$10,500 we talked about this morning?

2:20 p.m.

Mr. Cain: We were talking about the \$10,500.

For example, if you had two individuals who could be classed as spouses and both were 30 years of age with no children, it would seem only fair that each one should receive no more than 30 per cent, for a total of 60 per cent. If you gave either one of them more than 30 per cent, you would be providing them with more than you would provide the individual spouse of some other deceased worker, which would not seem quite fair.

So it is very difficult, quite honestly. We looked at it and worked around it. We really had very great difficulty finding anything at all to say that would make it more specific and yet not discriminate in one way or another against someone.

Perhaps putting in the minimums might at least show that the board would not go to zero, which was the concern you expressed, I think.

Mr. Chairman: That was on subsection 36(15)?

Mr. Cain: Yes.

Mr. Sweeney: Subsection 36(15) identifies the maximum of \$60,000 and it also identifies the maximum rate of 90 per cent. In other words, it says that no matter how you cut the pie you cannot go above the \$60,000 lump sum and the 90 per cent pension.

But the question that was raised was that, depending on the way the board might decide to apportion it, there really was no guarantee that one of those parties would receive a minimum amount; there was just no way of knowing that. As I understand Mr. Cain, his recommendation for consideration is the \$10,500 figure.

Mr. Cain: What I was actually asking, Mr. Sweeney, is whether or not that might resolve the question you had. I would like to discuss it again with board people, but I just wanted to make certain I was addressing the question you raised.

Mr. Sweeney: I did not have a figure, either, and I recall saying I was not even sure how you would arrive at such a figure but that I thought something like that should be built into it.

I suppose it is as reasonable as anything. At least it is consistent with another section where there is a minimum, in which

a surviving spouse is guaranteed no less than \$10,500. That is found in subsection 42(4). You are saying it would not go below that.

Mr. Cain: It poses some problems.

Mr. Sweeney: All right. As a starting point it is probably as valid as any. I do not have any better recommendation.

Mr. Cain: Then we will look at it again.

Mr. Chairman: It will stay stood down, if that is the proper phrase to use in a situation like this.

On section 43:

Mr. Chairman: We move to subsection 43(1) on page 12 of the bill.

Mr. Laughren: You are going too fast.

Mr. Chairman: Do you want to back up?

Interjection.

Mr. Chairman: Subsection 43(1) says: "In determining the average earnings of a worker, the board shall,

"(a) calculate the daily or hourly rate of the worker's earnings with the employer for whom the worker worked at the time of accident as is best calculated to give the rate per week at which the worker was remunerated at the time of the accident;

"(b) if the calculation under clause (a) does not fairly represent the average earnings of the worker, upon application, the board shall determine the worker's average earnings with the employer for whom the worker worked at the time of the accident during the 12 months or such lesser period immediately preceding the accident when the worker was employed with the employer."

Mr. Lupusella: Actually, Mr. Chairman, we are eliminating the present formula. This is the section that takes into consideration the concern I raised previously.

We are eliminating the present formula of 75 per cent of the average four weeks before the time of the accident. The only change with this provision is that the board will average the worker's earnings "during the 12 months or such lesser period immediately preceding the accident when the worker was employed with the employer."

There was a concern I was planning to raise then, and even Floyd touched upon such a principle. What about construction workers, for example, who are working for only six months? Then they are laid off, and they receive unemployment insurance.

What kind of scheme would the board follow? Would it take into consideration the income coming from unemployment insurance,

for example, plus the average earnings prior to the time of the accident? Or is there a system of new policies to be implemented to calculate the average earnings during the 12 months prior to the accident? What is going to happen?

I think we need 10 minutes' recess.

Mr. Chairman: Does anyone want any ice cubes?

Mr. Lupusella: It is a sign from the sky. When the board implements this section, there will be--

Interjections.

Mr. Chairman: Sorry for that interruption, Mr. Lupusella.

Mr. Lupusella: That is okay.

Interjections.

Mr. Lupusella: I think this new section is almost similar to the present formula. The only difference is that instead of the four weeks, it takes into consideration the 12 months prior to the accident, and the board will average the earnings of the worker.

We are going to be faced with the same problems of people who have been off work for six or seven months. For example, they go to work in the spring--I am referring to construction workers--and after going back to work, after a month, they get injured. What kind of a system will be implemented as a result of that?

Mr. Cain: The situation is somewhat similar to what you have today. However, in initially calculating the earnings rate in a claim, the board will go to clause 43(1)(a).

Mr. Lupusella: The board shall "calculate the daily or hourly rates of the worker's earnings with the employer."

Mr. Cain: That is right. However, as you see in clause 43(1)(b), if that does not seem to fairly represent the average earnings of the worker upon application--that is upon application by either the injured worker or the employer--

Mr. Lupusella: It can be worse.

Mr. Cain: --then we have to look at a year's earnings.

Mr. Lupusella: It can be worse.

Mr. Cain: It certainly could be better or otherwise. For example, an injured worker may ask for a net year's earnings because he wants the overtime included. He has had a lot of overtime. The employer--

Mr. Lupusella: We are considering the extreme. I am considering the people who are worse off, in the sense that they

have been unemployed for six months, which means they went back to work for a couple of months. I do not think that if you are going back to 12 months prior to the accident to resolve the situation of this worker--

2:30 p.m.

Mr. Cain: We are not going back 12 months. We are doing it on application from someone else. However, in so doing, of course, if during that year the person lost time from work that at least equals three months, then we take the earnings after the three months because we classify it as a new period of employment.

You are quite right, however; we would include anything less than three months in the calculation of the earnings rate, and it would obviously make it lower.

Mr. Lupusella: Mr. Chairman, we are dealing more or less with the same formula which is presently applied under the old act.

The only problem I have in calculating the average over the four weeks is that if a worker gets injured during the middle of the week, for example, he is losing a lot of money on the calculation of the average of the last week prior to the time of the accident. If, for some reason or another, the worker is unable to go to work because he has a cold or a fever, and so on--I am talking about under the present act--this type of injured worker will be penalized as a result of that.

However, with this new formula, the situation can be worse for a lot of injured workers. Perhaps there is no problem for the people who have been employed on a regular basis, working 12 months a year, and so on. I do not foresee problems for them.

I foresee a lot of problems, however, for people employed in the construction industry. There are a lot of people involved in that industry who work for six months. During the winter and spring, they are laid off, and so on. As well, if they have been off work because they had some sort of temporary ailment, such as a cold or a fever, they will be greatly penalized. Those who are better off will be those who have been working for 12 consecutive months--one year.

Mr. Cain: Only lack of work will be reason to leave days not worked into the earnings basis in order to calculate it under clause 43(1)(b). All sickness will be deducted out of that year's earnings. Those days will be deducted out, which benefits the injured worker.

Days for bereavement, and so forth, will all be deducted out to reduce the number of days over which you are considering the earnings they did receive. However, it is true lack of work, for any reason, will be left in, and, as a result, lower the earnings basis.

Mr. Lupusella: So, are you telling us that the situation can be worse than the present situation?

Mr. Cain: No, it cannot be any worse at all. As a matter of fact, if no one asks us, if no one makes application under clause 43(1)(b), I suppose it is possible that under clause 43(1)(a), if the person had a substantial lack of work, we would not take it into account because we are taking the nominal rate.

Then again, if that person has quite a lot of overtime, we are not going to take that into account, either, because we are simply taking the nominal rate.

Mr. Lupusella: What about workers who have been unemployed for a year, who go to work after a month, which means four weeks, and then get injured?

Mr. Cain: We would take clause 43(1)(a). We would calculate their earnings on their nominal rate, and if someone applied to have us take a year's earnings, we would end up taking the three or four weeks they have worked because they have not been employed. They had a period of unemployment that exceeded three months and they have therefore started a new period of employment.

Mr. Lupusella: Who has to ask for that? Is the board undertaking the task of implementing clauses (a) or (b), or is the worker the person who has to complain in order that such a revision take place?

Mr. Chairman: I think Mr. Cain said, and it states here, that it is on application by either party, either the employer or the employee.

Interjection: Not at the board?

Mr. Chairman: Not at the board. It is not up to the board to make it.

Mr. Lupusella: Oh, I see.

Mr. Chairman: The board's only discretion is to use clause (a) to begin with.

Mr. Sweeney: Why would the employer make such an application?

Mr. Cain: Simply because of the description that Tony gave. There may be a great lack of work, and the employer may feel that by taking the nominal rate you are not fairly representing that worker's average yearly earnings on which he maintains his family and household.

Mr. Sweeney: But clause 43(1)(a) does not refer to yearly earnings; it refers to daily or hourly earnings. It has nothing to do with it.

Mr. Cain: Purely nominal, that is all. Yes.

Mr. Sweeney: What I am trying to come back to is that I understood "upon application" in clause 43(1)(b) to refer to the

worker's option, if he did not feel he was being dealt with fairly under clause 43(1)(a), to apply under clause 43(1)(b); that makes sense to me. What I cannot understand is the basis for your statement that either the employer or the employee could make an application. Why would an employer make such an application, since clause 43(1)(a) refers only to daily or hourly?

Mr. Cain: In a sense, I suppose, there is a balance there. The injured worker might ask for clause 43(1)(b) to be applied because in looking back over the previous year he might say: "Certainly my nominal rate works out to \$20,000, but I have worked a lot of overtime and that is what I have used to maintain my family and so forth. That turns out to be \$27,000 a year, so I want that used."

Conversely, the employer might say: "It is true; \$20,000 is the eventual calculation taking the nominal rate. But this injured worker had a great deal of lost time due to lack of work"--that would be the only reason--"in the previous year, which really brings his earnings out to \$17,000 a year. That is what he used in order to maintain his family and household and that is what we believe should be the amount of money used to set the earnings basis."

So there are different reasons, but the basis of the yearly earnings is not clearly reflected when you take nominal rate.

Mr. Laughren: What options would there be for people who work only part of the year but who work a lot of hours in that part of the year, like construction people? How do you figure their rate?

Mr. Cain: As I said, we would take nominal rate of pay; but if someone asked us on application to use the year's earnings, there are two or three things that can occur. The fact that he worked a lot of hours in overtime will build his earnings up when you are taking it over a longer period of time, at least for those intervals when he did not work.

The point to make is that if his lost time was three consecutive months or more--13 weeks or more--then we take the earnings from the date after that 13 weeks; we do not use that interval of time.

Mr. Laughren: What about people who work on what in the mining industry they call bonus, where they might earn \$2,000 a month on a hourly rate and \$1,000 a month on bonus?

Mr. Cain: I am not certain of this, but I do not believe you can call that nominal rate, so I am sure the injured worker would say, "I want my year's earnings utilized because I want the bonus and so forth taken into account."

Mr. Laughren: But it would be at the yearly rate when he was working, not that if he worked only six months, it would be for that six months.

Mr. Cain: It would be for the six months if before that time he was off work at least 13 weeks.

Mr. Laughren: If he was only off for 12 weeks?

Mr. Cain: It is getting very close, but then, in theory, we should leave that period of lack of work in and project the earnings over the total time.

Interjection: But once you had the rate it would be expanded to a yearly rate for compensation purposes.

Mr. Cain: Yes, that is right.

Dr. Wolfson: I thought that was the point of your question, Mr. Laughren. Once you have established the rate, either an hourly rate or under clause 43(1)(b), the basis for compensation is annual expected earnings.

Mr. Sweeney: The figure you want to end up with is an annual rate, like \$10,000, \$15,000 or \$20,000.

Mr. Cain: That is right.

Mr. Sweeney: That is the figure you want; that is your calculation figure. So clauses 43(1)(a) and (b) are simply to arrive at that annual figure.

Mr. Laughren: Yes, but what is making us nervous is that here is a time when they might not be working, or they could average in unemployment insurance benefits along with earnings to lower the rate.

Mr. Cain: Unemployment benefits are not included; they are not considered earnings because they did not come from the employer.

Mr. Laughren: They are now, right?

2:40 p.m.

Mr. Cain: Not in setting the earnings basis.

Mr. Laughren: No? I am going to have to go back to my files, then, because I thought I had some correspondence with the board where I could not understand why they had included unemployment insurance as part of earnings to look after a problem exactly like that. However, I stand to be corrected.

Mr. Chairman: Are we prepared to vote on 43(1)?

Subsection 43(1) agreed to.

Mr. Chairman: On subsection 43(2): "Where owing to the shortness of time during which the worker was in the employment of the employer or the casual nature of the employment or where it is impractical to calculate the average earnings at the time of the accident, regard may be had to the average earnings that during

the 12 months prior to the accident was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so employed, then by a person in the same grade employed in the same class of employment in the same locality."

Any comments?

Mr. Laughren: A worker could report to work one day and get injured the first day. Is that the idea being put forward?

Mr. Cain: In the case of the item you describe, we would use clause 43(1)(a). They have gone to work, and we are going to use clause (a). Subsection 43(2) is frequently used for casual workers, people who are on and off work.

It has just occurred to me that I would have to look at the policy specifically to show how it is applied. Normally, it is applied when it seems to be just impossible to get earnings that seem reasonable at all for the injured worker, so we asked--

Mr. Lupusella: Have the policies already been implemented in Bill 101?

Mr. Cain: No. This is a policy that exists today. It would apply here. It would have no change. I suspect that it would be the same policy.

Dr. Wolfson: This subsection simply re-enacts the existing provision in the act.

Subsection 43(2) agreed to.

Mr. Chairman: Subsection 43(3): "Where the worker has entered into concurrent contracts of service with two or more employers under which the worker worked at one time for one of them and at another time for another of them, the worker's average earnings shall be calculated on the basis of what the worker probably would have been earning if the worker had been employed solely in the employment of the employer for whom the worker was working at the time of the accident."

Mr. Laughren: This is a ridiculous section of the bill. May I proceed?

Mr. Chairman: Yes, you have my attention. Carry on.

Mr. Sweeney: That was the two-by-four.

Mr. Laughren: This one really bothers me, because there are all sorts of people out there who, for one reason or another, have two jobs. Perhaps one job does not pay enough, or perhaps there are special financial reasons for working at two jobs. I think we discussed it earlier. It could be someone who pumps gas in the evening and has a regular job during the day, or whatever. That is not the point.

The point is that when this person is injured, he is

presumably prevented from doing both jobs. His income is cut by the total of both jobs. For you to say that you are going to pay him as though he had only one job is ridiculous.

Let us say that he made \$10,000 in one job and \$5,000 in another. If I read this thing correctly, you are saying that if he gets hurt on the job which pays \$5,000, that is what his earnings will be based on. I think that is absolutely outrageous.

Mr. Cain: It is not like that.

Mr. Laughren: Well, pretty close.

Mr. Cain: No.

Mr. Laughren: Where am I wrong?

Mr. Cain: If a person is employed at two jobs, usually one is full time and one is part time. If he is injured in the part-time job, we ask that employer to tell us what the person's earnings would have been had he been employed full time at the part-time job, and then we pay that.

Mr. Laughren: Yes, like the minimum wage pumping gas. This is really a terrible section.

I am sure we all know people who have two jobs. I think you have reinforced my point, Mr. Cain, that people can really get shafted here. Even if they got hurt on the job that paid the most, they are getting shafted. If they get hurt at the job that pays the least, they are really getting shafted.

I am using polite words here. I really think this should be changed because it is grossly unfair to the worker. Picture the worker at Algoma Steel or Inco who has a part-time job. There are lots of them.

I am telling you this section of the bill really bothers me. I wonder if it has really been thought through.

Mr. Chairman: Is that any different to what exists at present? Is it a re-enactment?

Interjection: It is current.

Mr. Laughren: Yes, it is horrible. Am I the only one who feels this way?

Mr. Sweeney: Can I just sort of extend the question a bit? To whom would the accident charge be applied if you were to take the earnings of both jobs rather than one?

Mr. Cain: That would be the problem, Mr. Sweeney, because the costs of the claim are charged against the accident employer and that rate group and so forth. If you took the earnings of another employer and added it to the worker's earnings, the accident employer would, in effect, be paying more than the actual amount he was paying the injured worker, because you are taking another employer's earnings into account as well.

To some degree we are doing that anyway with the part-time employee by elevating it, but we are not using another employer's earnings.

Mr. Laughren: I really think this is too blatant to let it go through the way it is.

Mr. Chairman: Do you have any proposed amendment then?

Mr. Laughren: There are a number of ways of going about it, but the fairest way is that--you have the ceiling in place anyway, so it is not as though it is an open-ended thing. The only fair way would be for the board to determine what the impairment of earnings is as a result of that accident.

I am not asking you to pierce the ceiling with two jobs. I am not saying that. But I really think what could happen this way is unfair. You could very well have the same principle involved as you have when a worker goes from one industry or company to another industry. It is a recurrence that is charged back to the second injury fund.

I am sure there is a way out. It is not beyond your wit, I hope, to resolve that. We are not just talking about a level of benefits here; we are talking about what could be fairly substantial.

Mr. Chairman: Outside of us getting into the political aspects of it, I think Mr. Cain (inaudible) that part of it--

Mr. Laughren: I am not suggesting that.

Mr. Chairman: No, I realize that.

Mr. Kennedy: Could I just enlarge on that? Suppose he has one job, he is playing baseball and he breaks his leg. He would be eligible then, presumably, for injury benefits from his employer. He is unable to work. Is that not right?

Mr. Laughren: Not if you are playing baseball.

Mr. Kennedy: It depends on what happened. Say you are sick and you cannot go into work; then you get sick benefits.

Mr. Laughren: Oh, I see.

Mr. Kennedy: If the person gets hurt on the second job, I suppose it depends on the union agreement or the agreement with the main employer whether he gets anything. Would benefits from the main employer be the same as if he were sick?

Mr. Sweeney: It would depend upon the contract.

Mr. Chairman: But in your situation or scenario, if I, as an employer, was paying a man \$10 or \$12 an hour, whatever it is, in a fairly high-risk industry where my rate to the board is perhaps \$8, \$10 or \$100, if the employee goes out and has an accident and has a secondary employer who is paying him \$3.50, \$4

or \$5 an hour, his rate must be lower. If that fellow is injured and is off work for a long time and that is charged back to my firm, I am going to be awfully upset.

2:50 p.m.

Mr. Laughren: To be fair, it should not be charged back to your firm.

Mr. Chairman: Good.

Mr. Laughren: I happen to agree with you there. It has nothing to do with your accident rate.

Mr. Chairman: That is right. It should not.

Mr. Laughren: I agree. I do not like that. It should come from the group of employers where he got hurt. Presumably, the service station operators--I do not know if that is a specific classification, but if it were, it would come from that group. That would be the fairest.

Mr. Kennedy: In what amount?

Mr. Laughren: The level that would take him up to his impairment of earnings. That is the only fair way.

Mr. Kennedy: The impairment of earnings on the main--

Mr. Laughren: No. The impairment of whatever his earnings are on the two jobs, subject to the ceiling.

Mr. Lupusella: The other option would be to have a universal insurance scheme.

Mr. Laughren: Are we making any headway?

Mr. Chairman: You are making a good point. I do not hear too many people picking up on it, though.

Interjections.

Mr. Lupusella: Mr. Chairman, you are recognizing that.

Mr. Laughren: I do not think it is unfair.

Mr. Kennedy: You are asking the person at the lower rate to pay a higher rate, so that he would get the equivalent of the--

Mr. Laughren: No, no. You could make that point, but the person is perhaps more likely to get hurt at the job where he is earning the most money. That is the more likely scenario. The worker is more apt to get hurt working, in the example I used, at Algoma Steel Corp. or Inco, than by pumping gas. Right? It is almost by definition.

Mr. Kennedy: By virtue of the number of hours.

Mr. Laughren: The number of hours, the type of job, that kind of thing. In most cases, it would be charged against the primary employer anyway. However, I can imagine the scenario--I used the worst example to make a point--where a person could get hurt earning the minimum wage and be prevented from earning \$31,500 someplace else. That is what is really bothering me. I do not think it is appropriate.

Mr. Chairman: In the absence of a firm amendment to what we had before--that is what we have to deal with--or an alternative--

Mr. Laughren: If you want to wait, I will propose an amendment. If the minister is prepared to take a serious look at it, fine. I do not think it is an unreasonable suggestion.

Mr. Chairman: Any comments from the minister?

Hon. Mr. Ramsay: No.

Mr. Laughren: There have to be some comments. You cannot let this section go the way it is.

Mr. Chairman: The comment is no comment.

Mr. Laughren: We are not going to get very far--

Mr. Chairman: What the minister has said is that this is identical to what it has been in the past. It was not a big concern--

Mr. Lupusella: We are here to replace the injustices.

Mr. Laughren: I do not understand the minister's inflexibility on this one. May I suggest we turn back to page 4--not to redebate a section, but to see how the earnings are calculated there.

It states: "For the purpose of this act...the earnings of the person shall be the earnings in the person's regular employment calculated in accordance with this act," and so on. One way of going about it would be that way, which would at least be fairer than the present system. You may have to change some of the wording.

You cannot just sit there and ignore this section. It is grossly unfair. Unless you believe--

Mr. Chairman: You have expressed your point of view.

Mr. Laughren: What do you propose to do?

Mr. Chairman: I am going to ask if this will carry, unless you are prepared to--

Mr. Laughren: Then I am prepared to carry on the debate at some length.

Mr. Chairman: Why not give us an alternative so we can discuss the alternative?

Mr. Laughren: My alternative would be worded in this way. I would change the part that reads, "the worker's average earnings shall be calculated on the basis of what the worker probably would have been earning." I would change that to read, "to be calculated on the total income of the two jobs, subject to the ceiling."

There is no discrimination in this way against someone who happens to have two jobs. That is what you are doing. If you want to outlaw a person having two jobs, say so. This is news to me. It is a complete surprise to me that you want to penalize people this way who have two jobs. You are not making a value judgement on people who have two jobs, are you? I do not think you are; I do not think the minister is.

Mr. Chairman: I do not think so.

Mr. Laughren: But that is what comes through.

Mr. Havrot: Mr. Chairman, since the employer is responsible or is charged for the cost of that accident, what would you suggest then? Say, for example, he was hurt in the job where he was making the most money. Would the service station operator also be responsible for that part of the assessment in the case of injury or death?

Mr. Laughren: I would think not because that is not where the accident occurred.

Mr. Havrot: But you cannot have it both ways.

Mr. Laughren: Look here, Ed. It says right now that it is in the employment of the employer for whom the employee was working. The bill already says it will be charged against the firm in which the accident occurred, whether it was the higher or the lower.

Mr. Havrot: All right, I understand.

Mr. Laughren: That is already in place.

Mr. Havrot: But who is going to be responsible for those costs?

Mr. Laughren: The same person who is now--wherever the accident occurred.

Mr. Havrot: Where the accident occurred, yes. But then you are saying you want the average of the two jobs he had, the high-paying one and, say, the minimum-wage job. What you are suggesting here is that you take both those jobs into consideration and pay him on that basis. Then to whom do you charge that back?

Mr. Laughren: The person where the accident occurred.

Mr. Havrot: It would be double assessment.

Mr. Laughren: No. Do not forget we are not talking about an individual employer; we are talking about a collection of employers. It is not as though one little service station operator has to assume all this burden. The classification system within the board is pretty large.

Mr. Havrot: But that is not the way it is set up at the present time.

Mr. Laughren: Yes, it is.

Mr. Havrot: No.

Mr. Laughren: Ask them. That is how it is. It is set up with a collection of employers so they all contribute together as an insurance pool. That is correct, I am sure.

Mr. Havrot: Under the particular classification he worked in.

Mr. Laughren: Yes, exactly. In this case I do not know if service station operators are one classification or not.

Mr. Havrot: I imagine they would have a separate classification, would they not?

Mr. Laughren: It does not really matter.

Mr. Chairman: It does not matter, no.

Mr. Laughren: The point is that it is a collection; it is an insurance principle.

Mr. Kennedy: It would not be at the low rate.

Mr. Laughren: Sure, it would be a low rate.

Mr. Kennedy: It would have the effect of raising the lower-paying firm's assessments.

Mr. Laughren: Yes, but holy smokes, if you look at them all together and look at the number of times this would happen, I do not think it would have a very noticeable effect on the assessment, but it would make an enormous difference to those few workers to whom this happened. I do not think a lot of workers would fall into this category. As I said earlier, I think most of them would get hurt at the place of primary employment; that would be my guess.

I will bet you would not be able to measure its effect on the total assessment at the board if you made this change; I really doubt that you would be able to measure what it would mean. But I really do not believe it was the intention to do this.

Mr. Kennedy: So if one worker had two jobs and another had one job, all minimum-wage jobs, the one gets hurt, because he happens to have more income from another job, gets more for the same accident than the other poor wretch who does not have another job.

Mr. Laughren: Right, exactly, because his income is impaired by maybe two or three times as much. He has obligations that are different; he has expectations. There is a big difference between those two workers.

Hon. Mr. Ramsay: I am trying to get straight in my mind, Floyd, what you are suggesting. If the fellow gets hurt on the higher-paying job, he gets benefits in relation to that higher-paying job. Or are you suggesting he gets benefits for the higher-paying job and his part-time job combined?

Mr. Laughren: Good question. I guess the first would be my fall-back position.

Hon. Mr. Ramsay: But you used both; you have described it both ways.

Mr. Laughren: Yes. In my view, we are talking about replacing income when people get hurt, and if you follow through with that principle, you would combine the two, subject to the ceiling.

3 p.m.

If, on the other hand, you are uptight about its costing too much--I really do not think it would--then at least take the highest income he is losing. He is losing all this income from the highest-paying employer. Good Lord, he may be making only a very small amount of money at one job and a good amount of money at the other. I think of the miner who is working part-time with shift work and so on. Some of them have time on their hands and they do that.

Hon. Mr. Ramsay: Not to be provocative, but is that not contrary to the policies of your party? Are you not opposed to holding two jobs, to part-time work? I thought I heard you argue that in the Legislature just this past spring in respect of the overtime at Inco.

Mr. Laughren: That was overtime which the company was demanding of the workers. We are not talking about overtime here, anyway.

Hon. Mr. Ramsay: No, but the debate went beyond that.

Mr. Laughren: No, no.

Hon. Mr. Ramsay: No, I am just asking a question. I am not making--

Mr. Laughren: No, come on. Do not try to get out of the issue. That is not what--

Hon. Mr. Ramsay: I am not. I am just asking a question. I will go back to look at Hansard and I will apologize to you if there is a discrepancy there.

Mr. Chairman: Can I read your amendment here, the one you just stated?

Mr. Laughren: This I have got to hear.

Mr. Lupusella: No. The debate is still going on, Mr. Chairman.

Mr. Laughren: We are not putting it to the vote now?

Mr. Chairman: No. I am just getting it on the floor. You are getting your words on the floor.

Mr. Laughren moves that subsection 43(3) of the act as set out in section 11 of the bill be amended by striking out everything after "basis" in the fifth line and inserting in lieu thereof "of the total average earnings under the concurrent contracts."

Mr. Laughren: Yes, because there are two.

Mr. Chairman: That is what you said, is it not?

Mr. Laughren: That is what I said.

Mr. Lupusella: Without exceeding the ceiling.

Mr. Revell: Yes. That would be built into it. I would think that this flows automatically from section 41.

Mr. Laughren: I just did not want the members to think I was suggesting that it would ignore the ceiling. Obviously, it cannot.

Mr. Chairman: Any further discussion on the amendment? You have more discussion, do you?

Mr. Laughren: Oh, yes.

Mr. Chairman: Okay. Carry on.

Mr. Laughren: I think this one is too obvious to let it go through without a thorough debate. I would encourage other members to jump in and give me a break.

Think for a moment, if you would, who has two jobs, generally speaking. I used the Inco miner and the Algoma steelworker as examples, but I suspect that, basically, it tends to be the lower-income people who have two jobs. I have no hard data on that, but I suspect they have two jobs because they need that other income.

I do not care whether it is--in one case, the person is earning \$15,000 in one job and, say, \$10,000 in the other. I used

a very dramatic example previously, but even if you use an example such as that, where the difference is not as dramatic, it makes an enormous difference to people who have those two jobs for financial reasons.

Think about it. A person could go from a \$25,000 gross income to 90 per cent of the net of the \$15,000 job, which would probably take them down to, say, \$13,000. I am guessing. You have cut this person's income virtually in half, although there is not that big a difference between the incomes from the two jobs.

No matter how you look at this issue, it is terribly discriminatory. I really do not believe that was the intention when it was drafted. Correct me if I am wrong. I think what was done there was to make sure there was only one employer assessed for any given accident, but that is not the effect of what has happened.

Hon. Mr. Ramsay: From a humane point of view, I cannot argue against what you are saying. However, if you just take a moment to look at it from the position of the office I occupy, I am administering a plan or attempting to set policy for a plan that is set up on the basis of a replacement of earnings from an employer, not a social insurance plan.

I find a lot of merit in what you are suggesting. I cannot argue against it; from a humane point of view it is great. But that is not what this particular act has been set up to do. It is not a social insurance plan.

Mr. Laughren: Can I take issue with you there? This is not a social assistance or insurance program; I understand that. But what I am arguing for is not, either.

One of the principles of the Workers' Compensation Act is to replace income lost as a result of an injury on the job. That is not considered a social assistance program, is it? I do not think the WCB is regarded as a social assistance program.

Hon. Mr. Ramsay: It depends on whom you are talking to.

Mr. Laughren: Yes, you have a good point there. We do not refer the WCB to the standing committee on social development; we refer it to the standing committee on resources development, for one thing.

I do not regard it as social assistance to replace someone's income when he gets hurt on the job. The only thing we are really debating here is whether or not income from both employers is replaced to 90 per cent of net and so forth, or just that from one.

We are not changing the rules of the game. We are not saying that the public sector steps in and picks up the difference. We are not altering the basic principle that the private sector compensates injured workers; that remains intact. So I do not see it in any way as a social assistance program. It simply says that if a worker is injured on the job, as closely as the legislation

allows--in this case 90 per cent of net--that injured worker's work income will be replaced.

While it is not going to affect 10,000 workers in the province or anything like that, think about how important it will be to the very few it does affect. That is what bothers me about it, and that is why I do not think it is an expensive change we are asking for. At least, I doubt it will be an expensive change; I do not know that for sure.

Hon. Mr. Ramsay: I do not want to appear wishy-washy, but in order to let things move along I would be prepared to give in and go back to an original request you made that we take another look at it.

Mr. Laughren: All right, we will stand that one down.

Mr. Chairman: We will stand that one down.

Mr. Lupusella: Can I give Floyd a break now?

Mr. Chairman: Unless you are prepared to vote on it now, it is best to leave it stood down.

Mr. Lupusella: No.

Hon. Mr. Ramsay: I might change my mind.

Mr. Chairman: Yes, that is right. You might get the minister upset.

Mr. Lupusella: Okay, let us wait for the minister's position and then we can debate it further.

Mr. Chairman: It might chip holes in your argument, anyway. Subsection 43(3), then, will be stood down.

Subsection 43(4) says, "For the purposes of subsection (2), 'employed at the same work by the same employer' means employment by the same employer in the grade in which the worker was employed at the time of the accident uninterrupted by absence from work due to illness or any other unavoidable cause."

That is really an interpretation. Is that carried?

Mr. Lupusella: No.

Mr. Chairman: No, it is not. Okay.

Mr. Lupusella: One is related to the other.

Mr. Chairman: It refers to subsection 43(2), which we passed. It does not refer to subsection 43(3).

Mr. Lupusella: Which one are you reading now, Mr. Chairman?

Mr. Chairman: I was reading subsection 43(4).

Mr. Lupusella: Subsection 43(4) is in some ways related to subsection 43(3). The minister will take a look at the problem.

Mr. Chairman: It cannot be, because it refers only to subsection 43(2), apparently. It says that.

Mr. Lupusella: Oh, subsection 43(2).

Mr. Chairman: Subsection 43(4) refers to subsection 43(2), which we passed.

Mr. Lupusella: It was passed? I am sorry.

Mr. Chairman: Shall subsection 43(4) carry?

Subsection 43(4) agreed to.

3:10 p.m.

Mr. Chairman: Subsection 43(5) says, "Where the employer was accustomed to paying the worker a sum to cover any special expenses entailed on the worker by the nature of the employment, that sum shall not be reckoned as part of the worker's earnings."

Mr. Laughren: May I assume that this does not include such things as bonus?

Mr. Chairman: I think it would be rather like meal allowances or clothing allowances or something like that, would it not?

Mr. Cain: Since that section already exists, basically, one assumes that the policy in existence would probably be very similar. Bonus is certainly something you include in earnings.

Mr. Laughren: Right. What about a northern living allowance? I am not talking about Sudbury, but much further north.

Mr. Cain: Normally, when a worker receives a living allowance, or expenses for rent at a motel, hotel or whatever, that is not included as part of earnings.

Mr. Laughren: What I was thinking more of was--

Mr. Cain: I am sorry. I see what you mean. If the employer put that in as part of wages--and I imagine they probably do--it would be wages, I think. This section would not affect the way it is applied.

Mr. Laughren: Yes, I see the point here. If it is work expenses and the worker is not working, it should not be included in income. As long as it is--that is exactly what it does.

Mr. Chairman: Okay, shall that carry? .

Subsection 43(5) agreed to.

Mr. Chairman: Subsection 43(6): "Where a worker is an apprentice or in the course of learning a trade, occupation, profession or calling and the worker's remuneration is of a nominal nature, the board may for the purposes of this act determine the worker's average earnings at the time of the accident at an amount it considers fair and equitable having regard to the average earnings of a fully qualified person engaged in the same trade, occupation, profession or calling, and the employer of the worker is liable to pay its assessment to the board on the earnings so determined."

Mr. Sweeney: Mr. Chairman, regarding the reference to "remuneration of a nominal nature," we were using that terminology earlier in the context of a regular rate of pay, as opposed to that which includes bonus, overtime and that kind of thing. I do not think that is what it means here. It is being used in a different sense here and it could change the whole thrust of the meaning.

How is it being used here? What does it mean in this sense?

Mr. Cain: This section of the act, I believe, dates back to the origins of the act, or shortly thereafter.

In looking at the history of this section, one notes that apprentices were often given pay of a truly nominal nature in that fashion--a couple of dollars a week, really. As a result, the board created a policy that, based on the years that the worker had proceeded into the apprenticeship course, he would receive a percentage of the journeyman's rate based on that length of time.

Recently, looking at this, one finds that apprentices are no longer paid a nominal rate of pay.

Mr. Sweeney: The normal rate of pay is roughly about 60 per cent.

Mr. Cain: Actually, it does not really appear that this is the way they are paid any more. They are usually paid to conform to the union contract. They are frequently in a union shop and are therefore paid a substantial amount of money, far different from a nominal rate. They are earning \$300 or \$400 a week or thereabouts, perhaps \$200, but certainly not \$5 or \$6--\$15 or \$20 a week.

That was the meaning of nominal, just some small amount of money. That just does not seem to exist. I am sure there are exceptions, but we have not found any recently.

Mr. Chairman: I am just going to try to help you out, John, if I can. In some trades that I am familiar with, they do get 60 per cent for the first 2,000 hours, 70 per cent for the next, and 80 and 90, until they become journeymen.

Mr. Sweeney: It is an upward scale for the first year, second year, third year, fourth year--however many hours a year you want to make it. What would be the effect if that reference to nominal rate were taken out?

Mr. Cain: We are compensating them at the wage they are actually getting from now on. We have been for quite a while, because the wage has been substantial and certainly cannot in any way be described as nominal.

Mr. Laughren: Were you afraid somebody would be getting paid a nominal wage and you would bump it up? Was this the purpose?

Mr. Cain: When this section originally went in, they were being paid a nominal rate and now one does not see that, but one never knows whether that might show up somewhere, although I cannot think of any circumstance when it might.

Mr. Sweeney: As it is worded at present, if you were to take out the phrase "remuneration of a nominal nature," the board has the discretion to look at the average earnings of people in that profession and set the rate at that level.

Mr. Cain: That is in effect what we do. We set their earnings on their real earnings; we usually do not go to the profession any more. We simply ask, "What is that apprentice earning?" and pay him compensation on the basis of the earnings that are being received. You might only run into this where the apprentice is attending school.

Mr. Sweeney: Right. It is to eight weeks off or something such as that.

Mr. Cain: That is right. There, they are frequently no longer employed by the accident employer during the time--I am sorry, with the employer prior to going to school. Their employment is terminated. I am not sure of the definition of termination in that case, but they are terminated and frequently return to that employer after the interval at school. Therefore we have to look at earnings in a different light when they are going to school.

Mr. Lupusella: Suspended.

Mr. Cain: Yes, they are suspended, I am sorry. Their employment is suspended; they go to school. If they are hurt while on an apprenticeship course at school, they are also covered by compensation. Then we do not take their earnings with the employer because obviously they are no longer employed there. We approach it in a different way.

Mr. Laughren: Is having this in there not a protection?

Mr. Cain: I would think so.

Mr. Sweeney: Yes, I think so. The main reason I raised it was that we seemed to be using the word "nominal" in a different fashion earlier from how I interpret it being used here. You are telling me you are going back to an oldtime reference to the word "nominal."

Mr. Cain: Yes.

Mr. Sweeney: "Nominal" meaning, as you say, a couple of dollars as opposed to anything of a standard nature.

Mr. Cain: That is right.

Mr. Laughren: It may not be the proper wording here. That may be what is causing the problem, not to slight the drafters, of course.

Mr. Sweeney: There is a difficulty when we use the same word in two different contexts; you are never sure to which one you are referring.

Mr. Cain: Mr. Sweeney, do you prefer the earlier context? I think it was used in the discussion, but I do not think it was used in the legislation.

Mr. Sweeney: No, I am sorry; I should not have put it that way. In our discussion, we kept referring to the concept of the nominal rate, the normal rate and the regular rate. The word was used in that context. I am not conscious of it actually being in legislation anywhere else and that really was the thrust of my comments.

Mr. Laughren: It is in this bill.

Mr. Cain: I do not think so.

Mr. Sweeney: I do not know where it is if it is, but I know we talked about it. The point is that it is possible for someone in a situation such as that to be in the very situation that was described. It would not be nominal according to the former definition. It would be nominal according to a different definition.

Mr. Cain: It was never used in this act.

Mr. Sweeney: Okay. If you are assuring me that the word "nominal" here is in the sense of the old-fashioned definition, I can understand it and this makes sense.

Subsection 43(6) agreed to.

Mr. Chairman: Subsection 43(7): "Where a worker, who has become entitled to benefits under this act and has returned to employment, becomes entitled to payment for temporary disability by reason of any matter arising out of the original accident, the compensation payable for such temporary disability shall be paid on either the average earnings at the date of the accident or the average earnings at the date of the recurrence of the disability, calculated in accordance with this act, whichever is the greater."

Mr. Sweeney: The last four words are really the key to the whole thing, are they not?

Mr. Laughren: This is a change, is it not?

3:20 p.m.

Mr. Chairman: I do not know, is it? It is apparently the same. Shall subsection 43(7) carry?

Mr. Laughren: No, it should not carry.

Mr. Lupusella: In the case of a recurrence of the accident, we are going back to the same old method, averaging the earnings based on the time when the accident took place, as the present act states. Am I correct?

Mr. Cain: Yes, or the earnings the person is currently earning immediately before he or she was laid off work. If they are earning wages at the time the disability recurs, then we will look at those earnings. If they are greater than the pre-accident earnings, we will take those earnings, the current earnings. That is the way we do it today.

Mr. Lupusella: My understanding is that you do not do that today.

Mr. Cain: Yes, we do it today.

Mr. Lupusella: Okay. Let us say that I was injured in 1968, and I have been working since then. In 1973, the same accident recurs, and causes a permanent disability. When the claim is reopened, the board takes into consideration the earnings of 1968 and not 1973. That is my understanding.

Mr. Cain: Are you referring to what we would have taken as the temporary total in 1973?

Mr. Lupusella: Yes.

Mr. Cain: In 1973, if you were working immediately before you were laid off because of a recurrence of your disability, we would calculate the earnings immediately before that layoff in 1973. If they were higher than your 1968 earnings, we would have taken those.

Today, if you were laid off again, it would be the same thing; we would take your earnings now.

Mr. Lupusella: It appears that this policy is not equally implemented for all injured workers, because I have been calling the board about this recurrent problem.

Mr. Cain: On the question you are particularly asking about, we do take earnings at the time of layoff.

Mr. Laughren: I think I can help here. I recall the problems we had in Sudbury.

There was a big shutdown at one point and a nine-month strike at another. Workers who had been hurt previously perhaps had an injury, plus a recurrence. While that shutdown was going on, for whatever reason, they had to go to the hospital for

surgery. The level of benefits at which the board would compute the earnings became unfair.

For example, let us say that the person went to the hospital in 1980. In 1975, he had had a recurrence of an original injury suffered in 1960--so 1960 was the date of the original injury, 1975 the date of the recurrence, and 1980 the date when he went to the hospital. He was not working at the time of the final recurrence, flare-up, or whatever; he was on strike, or the company was shut down. The board would then compute those benefits at the 1960 rate, not the 1975 rate.

Mr. Cain: That is correct. If there are no earnings at the time of further layoff, one goes back to the original earnings basis.

Mr. Laughren: That is not fair, because that is not a realistic level of earnings that the worker is missing. The worker is being denied income at a current level, not at a level back in 1960, would you not say?

I am not asking you to make policy, because I know that you are here as a dispassionate observer and adviser, not an advocate.

Mr. Cain: I just wanted to add one thing. I think you are aware that the policy was recently changed, so that we set the recurrence earnings basis in the same way as we would set the earnings in a new claim.

Therefore, if the person is not working at the time of recurrence, we can look at one year's earnings. Looking at the one year's earnings may benefit the worker, taking into account the lack of work policies that say we must leave them in unless the length of time is more than 13 weeks. However, that, I think, helps some injured workers.

Mr. Laughren: Yes, but it is still pretty wide open for abuse on the part of the board--I think "abuse" is the right word--because that is surely not realistic. It struck me that when that shutdown occurred--as a matter of fact, even when the strike occurred--some workers, the healthy workers headed off to Timmins to work at Detour Lake, to Elliot Lake, to Hemlo and to those areas.

The ones who had a recurrence such as we are talking about now could not do that. They ended up not only unable to seek employment elsewhere, but because they were unavailable for work, they could not draw unemployment insurance if they had just been laid off. They could not get into the make-work projects. They ended up on an abysmal level of Workers' Compensation Board benefits, obviously from no fault of the workers, and all stemming from that accident on the job.

I think there is a weakness in this section. Even though it sounds good, it is really misleading, not deliberately of course, but it says "whichever is the greater," and that makes it sound good but it is still subject to abuse. I do not know how to get

out of that unless you said something like, "Where a worker, who has become entitled to benefits under this act and has returned to employment, becomes entitled to payment for temporary disability by reason of any matter arising out of the original accident, future compensation payable for such temporary disability shall be paid on," etc., or at a level--I do not know how else you would say it.

Mr. Sweeney: Could I pick up on that point? The word "the" in front of the word "compensation" in the fourth line could be a limiting factor. If I can pick up on Mr. Laughren's observation and change "the" to "all future compensation payable," would that solve the problem?

Mr. Laughren: I think it would help.

Mr. Sweeney: As it is worded now, it could be limited to just the one incident or the one time, but if you say "all future compensation payable," you are covering a series of recurrences, not just any one recurrence. Basically, I think that is the intent behind it, but the wording limits the intent.

Mr. Laughren: You create a lot of problems--

Mr. Sweeney: Replace the word "the" on the fourth line in front of "compensation."

Mr. Chairman: With "all future."

Mr. Revell: I am not sure I agree with that analysis, Mr. Sweeney, with all due respect.

Mr. Sweeney: How does it sound to you if it--

Mr. Revell: I think you have to take it as a basic principle that the law always speaks. Each time there is a recurrence, surely the section speaks at each and every comment. I notice Mr. Hess was moving his head a minute ago. Maybe he has something to add to that, but I think the section as now drafted covers the case. I am subject to correction on that, but I am sure it covers exactly the situation Mr. Laughren is concerned about.

Mr. Laughren: No, it does not. We have specific evidence that it did not. Also, Mr. Cain has agreed that is exactly what would happen. With all due respect, it does not cover it. I bow to the wisdom of Mr. Cain, but it really does not.

Mr. Sweeney: Would the substitution of the words that have been suggested create an implementation problem from a definition point of view as far as you are concerned?

Mr. Laughren: Is the wording exactly the same?

Interjection: Yes, it is.

Mr. Laughren: Then we know it does not cover it.

Hon. Mr. Ramsay: It is the same except for the word "weekly."

Mr. Laughren: Sorry?

Hon. Mr. Ramsay: The reference to weekly earnings, a matter of computing the earnings. The old act referred to weekly earnings and has since eliminated the word "weekly."

3:30 p.m.

Mr. Laughren: One again, I do not really think that was the intention when it was drafted and I do not think it remains the intention of the board, but it is one of those things that happens.

We had a a lot of bureaucratic problems at that time. I do not know whether Mr. Cain remembers, but we had all sorts of problems with the board during that big shutdown and strike.

Mr. Chairman: Mr. Wilson, do you have any comments.

Mr. Lupusella: I have a suggestion. Instead of the word "future," we should take a look at the date of the accident or the average earnings at each recurrence of the disability, calculated in accordance with this act, whichever is the greater. The words "each recurrence of the disability" might take into consideration the concern raised by Mr. Laughren. We do not give the board the opportunity eventually to use its discretionary power to go back to previous recurrences and set up weekly benefits based on whatever the board might decide.

Mr. Chairman: There seems to be a sufficient cloud, and the minister has suggested that perhaps we stand this one down. We are not in a rush to go through this bill, anyway. If that is agreed, we will stand this item down and come back with an amendment, an interpretation or something else.

Hon. Mr. Ramsay: There is a high-powered consultation going on about it right here.

Mr. Laughren: Holy smokes! Look at that. That is truly awesome.

Mr. Chairman: Okay, we will get back to that one also. Let us go on to section 44.

On section 44:

Mr. Chairman: Subsection 44(1) says: "The net average earnings of a worker shall be determined by the board by deducting from the earnings of a worker,

"(a) the probable income tax payable by the worker on the worker's earnings;

"(b) the probable Canada pension plan premiums payable by the worker; and

"(c) the probable unemployment insurance premiums payable by the worker."

Carried?

Mr. Lupusella: No, Mr. Chairman. I have a question. This is such a contradiction. We discussed the Canada pension plan item under which section? Let us see.

Mr. Chairman: These are the premiums we are talking about.

Mr. Lupusella: Subsection 36(13), on page 10 of Bill 101, says: "In calculating the average earnings of a deceased worker for the purposes of paying compensation by way of periodic payments under this section, there shall be deducted from such earnings any payments received by way of any survivor's benefit under the Canada pension plan." We are talking about deceased workers under subsection 36(13).

Clause 44(1)(b) speaks of "probable Canada pension plan premiums payable by the worker." I am getting confused because, if someone is working, surely the employer makes contributions for CPP; there is no doubt about it. So the word "probable" becomes insignificant to me here and also in "probable unemployment insurance premiums payable by the worker." I am questioning those two clauses even though I am against them. I would like to have some rationale for the words "probable Canada pension plan" and "probable unemployment insurance." Why have these clauses been drafted in such a way?

Mr. Chairman: Let me take a shot at it; then somebody else can correct me. The lower-income employee would not pay as large Canada pension premiums or unemployment premiums as would the higher-income employee, who would be paying the maximum. How does that sound for an interpretation?

Mr. Laughren: Very good.

Mr. Laughren: Very good. Can I ask a question here? This is the section where I think the parliamentary assistant was showing some remarkable initiative and independence.

Mr. Chairman: He is out researching it now.

Mr. Laughren: He is running for cover right now.

We talked about how Canada pension is deducted from earnings and how the receipt of Canada pension benefits is deducted from earnings to determine the level of earnings the Workers' Compensation Board would pay, I think we were kicking around the expression "double jeopardy." The parliamentary assistant made a commitment to confer with the collective grey matter in the ministry about taking a look at that. It really did seem strange that the premiums would be deducted and then Canada pension plan benefits deducted to determine earnings.

Mr. Chairman: Is this not where we are arriving at the net figure as opposed to the gross paid figures?

Mr. Laughren: Yes.

Mr. Chairman: Do we not have to start some place to get the net figure?

Mr. Laughren: The point is, how dare you deduct Canada pension premiums, which lowers the gross figure to a lower net, then deduct Canada pension benefits again? That is why I called it "double jeopardy." I did not think that it would be the correct legal term, not having been trained in the law.

Mr. Chairman: Not being learned in the law.

Mr. Laughren: I will have to go back to law school when I am through with this part of my life.

Mr. Riddell: What do you mean by go back?

Mr. Laughren: Which could be Quebec. Go to law school, sorry.

Mr. Lupusella: Unless the intention of the legislation is to penalize the people who will be receiving temporary, total benefits and also the people who got the lump sum payment when the pension is established and when they go back to work eventually and have a recurrence. I think that is a poor ramification of the interpretation of these clauses which will affect lower-income injured workers.

Mr. Laughren: Could we get the results of the parliamentary assistant's conference with the ministry.

Hon. Mr. Ramsay: That has not been concluded as yet.

Mr. Laughren: I see. Is this a veiled suggestion that this section be stood down?

Hon. Mr. Ramsay: If you wish.

Mr. Sweeney: While that issue is being looked at, is there any possibility or is there any set of circumstances whereby a worker could be collecting unemployment insurance and compensation at the same time? I cannot think of any.

Mr. Cain: Yes, they sometimes do.

Mr. Laughren: Tell me how they do this.

Mr. Cain: First, I believe the Canada Employment and Immigration Commission has a provision for the disabled.

Mr. Sweeney: There is a sick benefit under--

Mr. Cain: Yes, that is true.

Mr. Sweeney: But I thought one did not apply if the other one did.

Mr. Cain: Sometimes they do collect unemployment and also workers' compensation.

Mr. Laughren: Full benefits?

Mr. Cain: I do not know what portion because we--

Mr. Laughren: It would not be programmed that a person could have a partial disability surely.

Mr. Cain: We are not aware of when they do. Sometimes--

Interjection.

Mr. Cain: When they tell us, we--.

Mr. Lupusella: Let us say a permanent disability award has been established and the injured worker is claiming to be temporary total, which means that he is not receiving any payment from the board beside the permanent disability award, and he launches an appeal and applies for unemployment insurance and most of the time if he wins the case he has to return the money to the unemployment insurance.

Mr. Cain: He well may have to return it to UIC. We are not in contact with them, so we do not know.

Mr. Sweeney: It is the same thing you do with welfare. You can collect welfare while you are waiting, but then you have to pay it back again.

3:40 p.m.

Mr. Cain: Usually, though, they will give us an assignment and we will give it back, but it is a very rare thing for the unemployment commission ever to provide us with an assignment.

Mr. Chairman: What are your wishes on this subsection?

Mr. Laughren: To be fair, it should be stood down until we have discovered what the parliamentary assistant discovered.

Mr. Chairman: Subsection 44(2) will be stood down. "The board shall on January 1 in each year establish a schedule setting forth a table of net average earnings based upon the provisions of this section and such schedule shall be deemed conclusive and final."

Mr. Lupusella: We thought we should do that and not the Minister of Labour, so we can increase some activities within the ministry.

Mr. Chairman: I think that is a little facetious.

Mr. Laughren: I think that was directed at the civil service, not the minister.

Mr. Lupusella: It was a cheap shot.

Mr. Chairman: A cheap shot; that is right.

On section 45:

Mr. Chairman: We are on subsection 45(1), which states:

"Where permanent disability results from the injury, the impairment of earning capacity of the worker shall be estimated from the nature and degree of the injury, and the compensation shall be a weekly or other periodic payment during the lifetime of the worker, or such other period as the board may fix, of a sum proportionate to such impairment not exceeding in any case the like proportion of 90 per cent of the worker's net average earnings."

Mr. Lupusella: Mr. Chairman, I am not prepared to vote on this section unless we are going to deal with the definition of "earning capacity." I have never appreciated the content of the present definition. Do we deal here with the earning capacity of a worker, or is it dealt with in a different section?

Mr. Laughren: That is the meat chart.

Mr. Sweeney: There was some discussion earlier of a review of the clinical rating system. I do not think that is under the ones that are coming.

Hon. Mr. Ramsay: Yes, it is. It is under phase 2.

Mr. Lupusella: So how will section 45 be implemented under Bill 101 when the dual award will be dealt with in phase 2 and made on the wage-loss supplement or what? Is section 45 being implemented at the time when the wage-loss provision will take place, or are there other occasions when section 45 will be implemented?

Hon. Mr. Ramsay: This is basically the same provision that is in the bill at the present time, except that it has been changed to reflect the 90 per cent of net.

Mr. Lupusella: I would like the present definition of "earning capacity" within the structure of the present act. That is why I raised my concern.

Mr. Sweeney: The problem surely is the fact of injured workers now who end up with a relatively low injury rating of 15 or 20 per cent, or whatever the case may be, because the rating is based solely on physical incapacity or reduction in some way, and yet we know that creates a problem for the worker to go back to work. For example, the construction worker who has a 20 per cent back injury, whether it is 20 per cent or 90 per cent, is still not going to be able to go back to work.

That is why we spoke earlier of the need to re-examine the whole question of the criterion or the factor that is taken into consideration when you arrive at a clinical rating. In today's work environment, you have to look at more than just whether he has lost a finger or slipped a disc or whatever the case may be. You have to look at the impact of that on his ability to return to work and to do certain kinds of work.

Hon. Mr. Ramsay: Again, is that not an issue in phase 2?

Mr. Sweeney: Sure. According to the list you gave me, the only one that seems to come close to looking at that is the very first one, where you have written, "Reform of permanent disability pension scheme," and particularly the question of basing pensions on workers' wage loss.

The wage loss is influenced by the clinical rating you start with. In our earlier discussion, the wage loss will be the difference established once you take the clinical rating factor into consideration, and any wages the worker is able to earn, if any, and then the difference with the original figure. So, if you do not revise the whole procedure of arriving at a clinical rating percentage figure, you could have trouble with the wage loss factor.

Hon. Mr. Ramsay: I am sorry, Mr. Sweeney, but I still think we are talking about two different things. You are talking about something that will be addressed in phase 2.

Mr. Sweeney: That may be the case, but that was not defined in the list you gave me earlier today. There is nothing here that talks about a redefinition of the clinical rating system.

During the early debates, we talked about looking at other jurisdictions, and asking what they took into consideration when arriving at a clinical rating figure. One which was brought to our attention, and seemed to have some merit, was the New York state system.

Hon. Mr. Ramsay: I state here at the bottom of my comments that the list I have given is not necessarily exhaustive. Other items may be added as the review proceeds.

Mr. Sweeney: That is the very thing that is creating a problem.

One of the reasons we asked you for a list is because we come up with something like this. We recognize that under section 45, a permanent disability, particularly if it is a partial permanent disability, and the way in which you compensate for that, does depend to a large extent on the way in which you establish the clinical rating. If we are not going to change the present way of establishing a clinical rating under this bill--and in the list you gave me, it is not shown anywhere--how are we going to do it?

Hon. Mr. Ramsay: It is at number one.

Mr. Welton: It is how you set permanent pensions, surely--the process you arrive at in determination of how you set the level of a permanent pension.

Mr. Sweeney: I would not have read that into it. If that is what you mean by it, I will make a little note in my book that this includes a change in the clinical rating system. Am I correct?

Mr. Welton: If that is chosen rather than the wage loss thing, as per the white paper, for example, which features that route--are not both of them alternative ways of determining permanent pensions?

Mr. Sweeney: Not really. While almost all of us had reservations about what is often referred to as the meat chart, that way of looking at a clinical rating system, we all agree that some form of clinical rating system will have to be continued. You really cannot eliminate it.

Even when you move into the wage loss principle as part of a compensation package, you will still have to have a clinical rating system as your first step.

3:50 p.m.

All we are saying is that, at the present time, the Ontario clinical rating system is based almost solely on physical incapacity. It does not take anything else into consideration. We have said all along that, like some other jurisdictions, we probably need to take other factors into consideration as our step one. We have not done that here. I did not interpret any of the things I got from the minister earlier to include that.

Dr. Wolfson: Just to put the matter beyond doubt, Mr. Sweeney, I think you can take it that the phase 2 review would include a review of the clinical rating system and its application to the determination of permanent pensions.

Mr. Sweeney: Okay. Including.

Mr. Lupusella: Going back to the principle I raised before about the earning capacity of the worker, I myself do not like the earning capacity phraseology used in the act, because there is no definition whatsoever. But when we deal with the impairment of earning capacity, the WCB has a clear policy on awarding supplementary pensions. Am I correct?

Mr. Cain: Under the section that refers to supplements, yes, you are quite correct.

Mr. Lupusella: The way the board is implementing "the impairment of earning capacity" of the injured worker at the time when there is a permanent disability award and he applies for a supplementary pension, because of the lack of definition of such phraseology the board uses "the impairment of earning capacity" of injured workers to cut supplementary pensions quite easily.

I am again referring to the group of injured workers who are

in the range of a 10 per cent permanent disability award. The board as a matter of policy uses the notion of an impairment of earning capacity that is not significantly greater for the nature and degree of the injury; therefore, the supplementary pension is denied to injured workers.

I wonder if we can define "the impairment of earning capacity" within the act.

Mr. Cain: Under this particular subsection, which is fundamentally the same as the wording in subsection 43(1) of the current act, when we calculate a pension for an injured worker, it is the clinical pension, the clinical award.

The words "impairment of earning capacity" in that particular section have been there for many years, and there was a time before 1940 when in fact that is exactly the way a pension was applied. The government of the day changed it because what occurred was that employers on occasion would take an injured worker back and pay him full wages, and therefore the board could not pay a pension. You could have an amputated arm, but there was no pension being paid. So this section is and will continue to be applied as a clinical pension.

Mr. Lupusella: Okay. I understand the process now. Maybe I was supposed to make my remarks under subsections 45(4) and 45(5).

In reference to section 45, I guess we are against the principle of 90 per cent. We are pro 100 per cent, so we are going to vote against section 45.

Mr. Laughren: There are a couple of things that bother me. One is that the whole "impairment of earning capacity" phrase in the bill is misleading.

If we had a wage loss system--from which, for some strange reason, you backed off--"impairment of earnings" would apply; that would be an appropriate phrase. But that is really not what permanent disability pensions are based on, is it? They are based on a clinical rating.

Mr. Cain: That is correct.

Mr. Laughren: They are not based on impairment of earnings.

Mr. Cain: That is true.

Mr. Laughren: So I have always felt uneasy about that phrase "impairment of earning capacity" because it really is misleading.

Mr. Cain: To a degree, though, you use the earnings in order to calculate it. You set a clinical award; then you go back, take the individual's earnings and apply the clinical award to them. To that degree, I suppose, it is an impairment of earning capacity, yes.

Mr. Laughren: Except that the worker goes back to work at full wages and, as you pointed out--

Mr. Cain: I do not dispute that.

Mr. Laughren: I think it would be a more honest section if you put "clinical impairment" in there instead of "impairment of earning capacity." I do not know whether you want to change the words, but I think it would be a better, more appropriately worded section if you did that. I will leave that with you.

The other thing that bothers me, and perhaps you can correct me, is that I do not understand this where it says, "the compensation shall be a weekly or other periodic payment during the lifetime of the worker or such other period as the board may fix." If it is a permanent disability, why would you want to fix it? What am I missing there?

Mr. Cain: We do pay some provisional awards where we pay them for perhaps two or three years and might pay them again for two or three years if one believes there is going to be improvement or deterioration in the worker's condition. Therefore, you pay it only provisionally for a specified period of time; then you look at the person again.

Mr. Laughren: I see. I have never encountered that. So it is best to leave that in there then?

Mr. Cain: We think so, yes.

Mr. Laughren: There seems to be a contradiction there, where you have a permanent disability award and then you say, "However, we will decide how long that permanency is." It does not seem to fit. Either it is a permanent award or it is not, right?

You use the words "permanent disability results." Then you are hedging your bets further down--at the expense of the worker, coincidentally.

Mr. Cain: No. With a provisional award--

Mr. Laughren: There is no mention of provisional awards in here. We are talking about permanent awards.

Mr. Cain: I realize that, but it just becomes a fact that there have to be things such as that.

Mr. Laughren: You make me nervous. The way it reads here, you can give a worker a permanent disability award and then, five years down the road, say you have decided it is not permanent.

Mr. Cain: We do not check on pensioners, as you know. I suppose in theory, if one found a pensioner had actually recovered from the disability, then one ought to stop the pension. We do not happen to check to make certain, but it would seem reasonable that you should stop a pension if the person is no longer disabled.

Mr. Laughren: Except they have been clinically rated as being permanently disabled.

Mr. Cain: That is true, but it can easily turn out that someone gets better, just as many get worse and we increase their awards.

Mr. Laughren: I wish you would second-guess the doctors at the right times.

Hon. Mr. Ramsay: For the record, and with respect to a comment that Mr. Laughren made at the beginning where he questioned the dropping of the wage loss, I have to remind him, with respect--

Mr. Laughren: I thought you would let that one go by.

Hon. Mr. Ramsay: --that the injured workers were among those who were convincing us to drop the wage loss system at this time.

Mr. Laughren: I have noticed that when they speak, you listen.

Hon. Mr. Ramsay: Absolutely.

Mr. Laughren: Let us go back to a few of these sessions.

Hon. Mr. Ramsay: I did not want to get anything started. I said, "with respect."

Mr. Sweeney: If I recall correctly, what they objected to was the dual award system that was in the original proposal, not the wage loss principle.

Mr. Laughren: It was the lack of permanent awards; that was what it was.

Mr. Lupusella: If I can pick up on this area--

Hon. Mr. Ramsay: I knew I should have kept my mouth shut.

Mr. Lupusella: --when Bill 99 was debated in the Legislature, I made a concrete proposal to the minister to postpone the issue of deducting Canada pension plan for phase 2 of the new act. The minister made a commitment--I do not want to put words in his mouth, but this is what he stated--that he would consider the proposal.

4 p.m.

Because you took into consideration the recommendation of injured workers to drop it at phase 1 of Bill 101, An Act to amend the Workers' Compensation Act, why do you not delete the CPP provision from phase 2 of the act?

Mr. Chairman: Wait a minute, we are still trying to get through subsection 45(1).

Mr. Lupusella: I understand.

Mr. Chairman: We want to go the other way. You are going backwards.

Mr. Lupusella: Just to clarify the record, I think the minister made a commitment that he would take a look and he would consider the proposal of delaying the stacking of CPP for phase 2 for a future debate.

Mr. Laughren: That is a good point.

Mr. Chairman: That is a very good point. Shall subsection 45(1) carry?

Mr. Lupusella: I did not hear the answer, Mr. Chairman.

Mr. Chairman: I think we have already discussed that.

Mr. Laughren: I do not think a great deal turns on it, but did you rule out the consideration of changing the words "impairment of earning capacity" to "clinical impairment"?

Mr. Chairman: I think the ministry wishes to leave it the way it is printed at the present time.

Mr. Laughren: Okay. There is such a tradition in this place.

Mr. Chairman: Not to rule out amendments at some future date--not in these debates but in other debates. I am sure they will come.

Mr. Laughren: You will be bringing this bill back in frequently for changes.

Mr. Chairman: Another phase, yes.

Shall subsection 45(1) carry?

Mr. Laughren: No.

Mr. Chairman: All those in favour?

All those opposed?

Subsection 45(1) agreed to.

Mr. Chairman: Subsection 45(2): "Compensation for a permanent disability is payable whether or not an award was made for temporary disability."

Mr. Lupusella: Are we talking about permanent temporary disability? It is too vague.

Mr. Chairman: It does not say that. It says "permanent disability." It does not say "permanent temporary." I do not know.

Mr. Lupusella: Is it related to subsection 45(1), permanent disability?

Dr. Wolfson: What it says is that the compensation for permanent disability does not change whether or not there is a temporary disability award made. It continues.

Mr. Chairman: Agreed? Shall that carry?

Subsection 45(2) agreed to.

Mr. Chairman: Subsection 45(3): "The board may compile a rating schedule of percentages of impairment of earning capacity for specified injuries or mutilations that may be used as a guide in determining the compensation payable in permanent disability cases."

Mr. Laughren: Mr. Chairman, I would like to amend this by striking out the words "rating schedule of percentages of impairment of earning capacity" and replace them with the words "meat chart."

Mr. Chairman: Thank you.

Mr. Laughren: Is there no overwhelming endorsement?

Mr. Chairman: Do you want agreement on that?

Mr. Sweeney, you also had a point to make.

Mr. Sweeney: You obviously have to have something such as this. Why do you use the word "may" there? It is just a curious question. You cannot operate without it, can you?

Dr. Wolfson: The representative of the board is not here, but I think the answer is basically historical. It has been this way since the formation of the act when the board was empowered to establish the clinical rating system in order to facilitate its adjudication on the impairment of earning capacity. Rather than compelling the board to establish the schedule, it was made permissive. This is, as you know, exactly a re-enactment of the governing provision in the current act.

Mr. Chairman: Shall subsection 45(3) carry?

Subsection 45(3) agreed to.

Mr. Chairman: Subsection 45(4): "Where the impairment of the earning capacity of the worker does not exceed 10 per cent of the worker's earning capacity, instead of a weekly or other periodic payment, the board shall, unless in the opinion of the board it would not be to the advantage of the worker to do so, direct that such lump sum as may be considered to be the equivalent of the periodic payment shall be paid to the worker."

Mr. Lupusella: Mr. Chairman, I still have problems with the impairment of earning capacity. It appears that we got clear

direction that we are dealing with the percentages of disability based on the clinical rating system.

Why are we using the impairment of earning capacity instead of percentage of disability? I still do not understand the rationale behind why we are still dealing with impairment of earning capacity.

Impairment of earning capacity, as far as I am concerned, can be related at the time when a percentage of impairment and disability has been established, and one can do light jobs as a result of the permanent disability award. That is when the impairment of earning capacity comes into the picture. If we are dealing with permanent disability awards, why are we using the impairment of earning capacity of the worker at a time when percentage of disability is more appropriate than impairment of earning capacity? Can I get an explanation about that?

Dr. Wolfson: I guess, Mr. Lupusella, at the risk of repeating myself, subsection 45(3) establishes the basis for the board using the clinical rating system as a guide to the measure of the impairment of earning capacity. That has historically been this case. Subsection 45(4), as did its predecessor, simply re-enacts the present provision of the act to leave the basis for establishing permanent pensions unchanged pending a review in phase 2.

Mr. Lupusella: It is wrongly used even though there is an historical relationship about the use of the word.

Dr. Wolfson: I do not quarrel with that, Mr. Lupusella, although maybe Doug Cain from the board would. As you know, there was a good deal of debate about the various deficiencies in the existing system and there were views from all sides on how we could best correct those deficiencies.

What the minister has said is that at this point we have chosen to address certain other aspects of the workers' compensation system and leave the very difficult problem of reconciling the opposing views on the question of reform of permanent pensions until phase 2.

Mr. Lupusella: Are you telling us that percentage of disability is interrelated with the impairment of earning capacity at the same time? That is what I still do not understand because the board might use two different scales. The first one is to measure the degree of disability resulting from an accident, which is the meat chart or the clinical rating system, but the earning capacity of the injured worker can be used within such framework at a time when the supplement pension should be awarded to injured workers.

Dr. Wolfson: We are still on subsection (4) in terms of the lump sum rather than--

Mr. Lupusella: That is why I have a problem with the impairment of earning capacity--

Dr. Wolfson: There is a consistent--

Mr. Lupusella: --unless we come out with a clear definition of "impairment of earning capacity" under section 45, which should be the first item of all of the subsections.

Dr. Wolfson: I am not sure I can clarify it much further, Mr. Lupusella, except to indicate what the act currently provides. This bill reiterates that the board may use clinical ratings as a guide to establishing the impairment of earning capacity.

The reference in subsection 4 is not to percentage disability; it is quite clearly a reference to the impairment of earning capacity, which under the existing system is determined by using as a guide the clinical rating system.

Mr. Lupusella: Let us go ahead then.

Mr. Chairman: Mr. Laughren, did you have a question on this item?

Mr. Laughren: Yes, I did. This is subsection 45(4) we are on, is it?

4:10 p.m.

Mr. Chairman: Yes.

Mr. Laughren: Because of the way the bill reads and the way the present act is, a worker can have a six per cent pension and a seven per cent pension and the board can and does refuse commutation on either one. It frequently will not allow a commutation because it argues that it is the combination of the two that determines the impairment of earning capacity.

I think that is wrong. If you want to have a system whereby the board determines whether or not the commutation will be awarded--I do not think you have that right; nevertheless, that is what is there--then I think if any one pension is under 10, the worker should automatically, without appeal, be able to have that disability pension commuted. Right now, the board will not do that except in unusual circumstances.

Mr. Cain: That is quite true if the accumulation of all the pensions exceeds 10 per cent, because the section is worded "if the pension exceeds 10 per cent."

Mr. Laughren: Yes. I do not understand that because you could have one pension at 20 per cent or whatever and another that is smaller, perhaps even three per cent or four per cent. The worker might want to clean off that one pension for whatever reason--it might be the mortgage or whatever--and the board turns it down. Of course, the whole idea of commutation makes me angry because of the way you are so arbitrary about it.

Nor is the worker consulted on this section. It states that the board shall direct that a lump sum be considered, and the

worker is not given the option of maintaining that small disability pension if he or she wants to have it continue. Most of them do not, but I do not think it would hurt the board to allow that to continue to be paid in the form of a pension.

For example, if it was me, I would want it there because I know about the periodic increases that come along every July and I should have the right to leave that in place. I think that is where the board is not fair to injured workers. I do not think it is asking too much to say that it is with the permission of the injured worker that the pension of 10 per cent or less be commuted. Is that an unreasonable request? If it is, maybe it will have to be stood down.

I do not think that is asking a lot, but there are workers who would like to have that ongoing small pension for whatever reason. Why not let them have it? In most cases they will probably say, "Yes, commute it."

Mr. Lupusella: Give them the option.

Mr. Laughren: Yes. That is all I am saying.

Hon. Mr. Ramsay: Your arguments make a lot of sense. I just do not know what the other side of the coin is because I had never really given it any thought. What is the other side, Doug? Are you in a position to say?

Mr. Cain: Certainly, that is quite true administratively. It is frequently a small amount of money, and for the worker to gain the greatest benefit from it, one thinks of giving him the lump sum.

Mr. Lupusella: It would not hurt to give them the option.

Mr. Cain: If it was decided, I suppose there would be no problem.

Hon. Mr. Ramsay: We will stand that down and take a look at it. I do not think it is unreasonable.

Mr. Sweeney: Mr. Chairman, perhaps the minister may want to reflect on this as well. Early in these hearings we were given a breakdown of the actuarial cost of putting existing surviving spouses on the same basis as this bill. The figures given to us used two discount rates, two per cent to arrive at one set of figures and seven per cent to arrive at another set of figures, which really is not a fair match.

That brings me back to a discussion we had during the committee hearings earlier. When you are going to allow a worker to take this 10 per cent out--to make a lump sum payment, in other words--that is based on the seven per cent discount under the present system. Is that right?

Mr. Cain: That is correct.

Mr. Sweeney: Okay. Yet all the way through the Weiler hearings, we were talking about the fairness of a two or two and a half per cent discount. As a matter of fact, I think the reference made was that most judicial decisions are now based on two to two and a half per cent. In other words, the inflation factor is so obvious that you just have to take it into consideration.

Once again, the whole issue was discussed--and that is something we are going to have to look at, to re-examine, review, and so on. Now we are arriving at the point where we are actually mandating a lump sum payment. Where is the ministry or the board's thinking with respect to moving from a seven per cent discount to a two per cent discount?

Hon. Mr. Ramsay: I think Ian explained it before.

Mr. Cain: In response, I think to a question from Mr. Lupusella, I explained that. I think the question arose because of a letter that went out to employers from our actuary with respect to the board being fully funded. My comment was that the board is moving in that direction and that the discount rate of seven per cent, as it exists at this moment, will be reviewed by the corporate board as time progresses and as we move towards the fully funded approach.

At those times, it is quite possible the discount rate will be reduced. As it stands now, however, the board is not fully funded.

Mr. Chairman: We will stand that one down for further consideration from the ministry.

On subsection 45(5):

Mr. Chairman: Subsection 45(5) reads: "Notwithstanding subsection (1), where the impairment of the earning capacity of the worker is significantly greater than is usual for the nature and degree of the injury, the board may supplement the amount awarded for permanent partial disability for such period as the board may fix unless the worker,

"(a) fails to co-operate in or is not available for a medical or vocational rehabilitation program which would, in the board's opinion, aid in getting the worker back to work, or

"(b) fails to accept or is not available for employment which is available and which in the opinion of the board is suitable for the worker's capabilities."

Is there any discussion?

Mr. Lupusella: I have an amendment to subsection 45(5). It appears that injured workers before the committee made the recommendation that subsection 45(5) should be changed.

4:20 p.m.

Mr. Chairman: Mr. Lupusella moves that section 45(5) be amended by changing the word "earning" to "earnings," deleting the word "capacity" in the second line, deleting the word "may" in the fourth line, and substituting the word "shall" therefor.

Do you wish to speak further to that, Mr. Lupusella?

Mr. Lupusella: The rationale used by injured workers in some sense falls under the same concern I had about the impairment of the earning capacity which, in my own mind, does not make sense. With the present provision contained in the old and new acts, it appears that a person will receive a 10 per cent disability award.

Under the present policy the Workers' Compensation Board is not awarding supplementary pensions because of the earning capacity of the worker, which is not significantly greater than is usual for the nature and degree of the injury. Therefore, the supplementary pension provision in the present policy and in the way in which section 45(5) is drafted gives discretionary power to the board as to whether the injured worker should receive the supplementary pension. If we change the verb from "may" to "shall," I think that will be an improvement and will alleviate many appeals that currently are ongoing in the appeal system, because the board is the final judge in deciding whether a supplementary pension should be given.

For these reasons, I think "impairment of the earning capacity" makes a lot of sense, because the capacity of the worker to make such earnings is so interrelated with the percentage of a disability which is awarded by the board. I think changing the verb "may" to "shall" will alleviate many appeals before the board, because injured workers will have better opportunities to receive supplementary pensions from the board, if, of course, they co-operate with the rehabilitation department and search for light or available jobs.

Mr. Sweeney: I would like to draw attention to the same point. The difficulty I have with this case--I have been listening to discussions and debate about using this terminology "impairment of the earning capacity" in several sections and I can see points on both sides. In this case, when we are talking specifically about a supplement that makes up the difference, the danger of leaving in the word "capacity" there is that, being undefined, we have a very nebulous term.

Nobody can question what the impairment of earnings are. If a person earned \$200 a week before and now is only able to earn \$100 a week, there is no quarrel about that. It is fairly obvious. If you leave in the word "capacity" in this particular usage, you are giving someone else the discretionary power to say, "Sure, you may be earning only \$100 now, but if you get out there and really hustled your butt you should be able to make \$150, so therefore your capacity is \$150."

This whole question of "supplement in this stage in the bill is the closest thing we have to a wage-loss principle, until we actually get a wage loss principle. If we truly mean that we want

some temporary method of dealing with the wage-loss principle, then taking the word "capacity" out of there is going to do it in a fairer and more efficient way. It is not just fiddling with words. It is a case of whether you deal with the real world, what is really happening, or whether you deal with something that might be, may be, could be. That is the danger of leaving the word "capacity" in here in this particular instance. Obviously, you recall I have not made a point earlier because I do not think it really mattered as much, but in this case I think it does make a difference.

Mr. Chairman: Mr. Sweeney moves that subsection 45(5) of the act as set out in section 11 of the bill be amended as follows: by striking out "earning capacity" in the second line and inserting in lieu thereof "earnings"; striking out "significantly" in the second line; striking out "may" in the fourth line and inserting in lieu thereof "shall."

Shall the amendment carry?

Interjection: Carried.

Mr. Sweeney: All I heard was "carried."

Mr. Chairman: I thought I vaguely heard a "nay" in there. That is my good ear on the right-hand side.

Mr. Lupusella: The minister agrees it is carried.

Mr. Chairman: I really thought I heard a "no" there.

Mr. Sweeney: I think the chairman of this committee is extending his capacities for certain sensory definitions.

Mr. Chairman: Those in favour of the amendment? Those opposed? It looks like a tie vote. I understand the original wording in the bill and I certainly understand the alternative amended wording and I would have to vote against the amendment.

It was a tie vote--4-4.

Motion negatived.

Mr. Chairman: Shall the subclause carry as printed? Those in favour of it carrying as printed so signify. Those in favour? Opposed, if any? I would vote in favour of it carrying in view of my last vote.

Subsection 45(5) agreed to.

Mr. Chairman: It is now 4:30 p.m. We will draw a nice little line below that section and begin with subsection 45(6) tomorrow morning at 10 o'clock.

Mr. Lupusella: Sharp.

Mr. Chairman: Sharp.

The committee adjourned at 4:30 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

TUESDAY, SEPTEMBER 11, 1984

Morning sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)
Gillies, P. A. (Brantford PC)
Havrot, E. M. (Timiskaming PC)
Johnson, J. M. (Wellington-Lufferin-Peel PC)
Kennedy, R. D. (Mississauga South PC)
Laughren, F. (Nickel Belt NDP)
Lupusella, A. (Dovercourt NDP)
Mancini, R. (Essex South L)
Riddell, J. K. (Huron-Middlesex L)
Sweeney, J. (Kitchener-Wilmot L)
Yakabuski, P. J. (Renfrew South PC)

Substitution:

Kolyn, A. (Lakeshore PC) for Mr. Villeneuve

Also taking part:

Ramsay, Hon. R. H., Minister of Labour (Sault Ste. Marie PC)

Clerk pro tem: Carrozza, F.

Staff: Revell, D., Legislative Counsel

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation Board

Hess, P. A., Director, Legal Services Branch

Welton, I., Senior Liaison Officer, Policy Secretariat, Program Analysis and Implementation

Wolfson, Dr. A. D., Assistant Deputy Minister, Program Analysis and Implementation

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, September 11, 1984

The committee met at 10:16 a.m. in committee room 2.

WORKERS' COMPENSATION AMENDMENT ACT
(continued)

Resuming the adjourned consideration of Bill 101, An Act to amend the Workers' Compensation Act.

Mr. Chairman: If the committee members will take their seats, we shall get under way.

Before starting today, I must say I have a commitment I must honour tomorrow afternoon at two o'clock, so I will not be able to be present in the afternoon. Our vice-chairman is not sitting in on these committee hearings right now, but is on another committee.

Mr. Havrot has consented to take the chair, at great expense. I do not know whether he wants me to share my extra \$10 or not.

Is it the wish of the committee that we appoint a vice-chairman in the interim for the next two and a half days, or do you just wish someone to take the chair?

Mr. Riddell: Why do you discriminate against opposition members, Mr. Chairman?

Mr. Chairman: Well, I thought you would rather have a government member in the chair.

Mr. Riddell: Is it because you have somewhat of a majority?

Mr. Chairman: If any of you would rather have someone else--

Mr. Riddell: Are you still gloating over this last federal election?

Mr. Chairman: No. I thought you would rather utilize one member of the committee.

Mr. Havrot: We have been very humble--

Mr. Riddell: The people have spoken, as they will in November.

Mr. Havrot: --March 1985.

Interjections.

Mr. Sweeney: We would just like a crack at breaking those ties.

Mr. Chairman: Yes, that is right.

I have a motion that Mr. Havrot be vice-chairman for the balance of these meetings. Agreed?

Motion agreed to.

Interjections.

Mr. Chairman: I have just been corrected. It is not vice-chairman; it is acting vice-chairman.

Mr. Chairman: Again, before proceeding, we had stood down section 43(7) on page 13. Mr. Revell would like to make a comment and get some concerns on record.

On section 43:

Mr. Revell: Yesterday afternoon we were discussing section 43(7), which deals with further benefits where there has been a recurrence of a temporary disability. Through a misunderstanding of the fact situation that was on the floor, I believe I gave some incorrect advice.

Mr. Chairman: Inadvertently.

Mr. Revell: Inadvertently, yes. The section definitely applies where there has been, of course, an initial injury, then a recurrence which causes the worker to miss time from work. If he keeps returning to work and keeps losing time because of frequent recurrences, then the section continues operating.

But there can be fact situations, I believe--now having discussed it very briefly with Mr. Cain and with Mr. Laughren yesterday afternoon--when it is possible to have an initial temporary disability, return to work, suffer a layoff not occasioned by the original injury, and then subsequently a period where there is no remuneration upon which you could base the operation of section 43(7).

I just thought I would clarify that I believe the position put forward by Mr. Cain was the correct one. I apologize to Mr. Sweeney for opening up an incorrect interpretation of the situation.

Mr. Sweeney: So what is your suggestion as far as the wording is concerned? I think you have a sense of what our concern is. How do we get around it?

Mr. Revell: It is a policy issue and I have received no instructions to redraft anything at this stage. I would be quite willing to meet with any member of the committee and prepare something that would reflect the views of the members.

Hon. Mr. Ramsay: Mr. Chairman, it is one of the items on our list for review and we will have a statement on it tomorrow, or more likely on Thursday.

Mr. Sweeney: Okay. I think we need something as a starting point for debate and decision.

Mr. Laughren: That is fine. I agree that it is a policy issue. I do not think it is a policy issue that concerns an expenditure necessarily; it is more a question of clarifying it rather than it being something that is going to cost the employers of the province money.

Mr. Cain: I am not certain. When you say "clarifying it," in what way did you mean clarifying it? I am sorry.

Mr. Laughren: Because of the problem that now exists and which we went through yesterday. I suppose it could be a small amount of money, but that is not the central question here. The central question is to make the wording so that it rules out the inequity that is there. I think that is the issue, not increasing benefits.

Mr. Chairman: Rather than leaving it too much to interpretation.

Mr. Laughren: Yes.

Mr. Lupusella: Mr. Chairman, I raise this principle in accordance with what legal counsel stated. My specific concern is that we might be faced with different possibilities of injured workers, of injured workers receiving, for example, a permanent disability award, going back to work at a lower salary. What the board takes into consideration within the principle of the framework of the present policy, even though Doug disagrees with me, are the earnings at the initial accident.

What I would like to see under subsection (7) is the board taking into consideration the earnings at the date of each recurrence if the earnings are higher. But if they are lower for any reason, because of the disability involved, whatever is greater should be taken into consideration. That is how I would like to see the wording of this subsection.

Mr. Cain: Unless I am misunderstanding, subsection (7) does just what you are suggesting. Where I believe the concern arises is when there are no earnings at the time the person requires more medical treatment and so forth and goes back on to compensation. We do take the earnings at the time of recurrence or the original earnings, whichever are higher. So I do not think there is any problem there. I think your concern yesterday was when there are no earnings at the time of recurrence because the person has not been working.

Mr. Lupusella: Yes, even that.

Mr. Laughren: Just on a point of order: It should be noted that we have a very special guest in this committee this morning in the person of Mr. Alfie Lupusella.

Mr. Lupusella: Mr. Chairman, if I may, I would like to introduce to the members of the committee my uncle, who has come from Italy and is a public servant with the Italian government, and my son, Alfie.

Mr. Chairman: Welcome to our committee. I am sure you will get a great deal of enjoyment and knowledge derived from your deliberations with us.

Let us move over to page 15.

Mr. Laughren: Just so that the board knows, there is another Lupusella on the way.

On subsection 45(6):

Mr. Chairman: Subsection 45(6) reads: "In calculating the amount of the supplement under subsection (5), the board shall have regard to the difference between the net average earnings of the worker before the accident and the net average earnings after the accident, and the compensation shall be a weekly or other periodic payment of 90 per cent of the difference but the sum total of such supplement and the award under subsection (1) shall not exceed the like proportion of 90 per cent of the worker's pre-accident net average earnings and the board shall have regard to the effect of inflation on the pre-accident earnings rate and to any payments the worker receives under the Canada pension plan."

Mr. Laughren: There are two things here. One is the whole question of the Canada pension plan, to which I know that you know we are opposed. The other is the 90 per cent. Are we not talking here about wage differential as a result of an injury on the job? That refers to the net average earnings of the worker before and after the accident.

Mr. Cain: If there are earnings after the accident. Sometimes these people are not earning anything when they are not at work.

Mr. Laughren: If there are, however, we are talking about the board making up 90 per cent of the difference.

Mr. Cain: The difference between pre-accident and post-accident.

Mr. Laughren: Right. What I need to know here is why there needs to be a 10 per cent penalty. We are not talking about an incentive to go back to work. The person is already at work. Is that right, Mr. Cain?

I am interpreting. I am not trying to put Mr. Cain in an advocacy position because he would reject that anyway, but I am reading it correctly, am I not? If a worker has gone back to work, has another job, and because of his disability earns less money than he earned before the accident, the board says, "All right, we will pay 90 per cent of the difference between the two wages"?

Mr. Cain: Well, 90 per cent of net, but we take the pension, which is already a percentage of 90 per cent of net. We take the earnings. In effect, you are taking both situations. Yes, you are taking 90 per cent of the net difference between pre-accident and post-accident.

Mr. Laughren: What is bothering me about that is that, unlike the other situation where a person is off work and getting 90 per cent of net, you can make the argument the minister made yesterday--and I do not agree with it--that there is that 10 per cent incentive to go back to work. However, when the person is already back at work and doing a job, that 10 per cent penalty should not be there, because there is no such thing as an incentive when he is already working.

As a matter of fact, you might want to encourage that person to be back there doing work at a lower rate of pay so that he or she is not off on either total compensation or some form of rehab.

Hon. Mr. Ramsay: Mr. Chairman, we committed ourselves yesterday to reviewing the 90 per cent of net in all cases where it applies in this act, and we intend to do that. We are in the process of doing that.

Mr. Laughren: To be fair, though, this is a little different.

Hon. Mr. Ramsay: I understand your point.

Mr. Laughren: I trust Mr. Cain's judgement, but he looks so dubious about the argument I am making that I am puzzled.

Mr. Cain: In the argument you are making, yes, there is a difference. I agree with you.

Mr. Laughren: Okay. I cannot ask for anything more than that, Mr. Cain.

Mr. Chairman: You agree with him?

10:30 a.m.

Mr. Sweeney: Not only that, but following up on the same point, the other argument used was that there would be a reduction in expenses to the worker because he was not working. That argument does not hold either. The two main arguments for using the 90 per cent just disappear then.

Mr. Lupusella: Mr. Chairman, in subsection 45(6), there is a particular reference to subsection 45(1). I had a problem with the earning capacity of the worker. The first question I would like to raise is, is there is any case in which the 90 per cent of the worker's pre-accident net average earnings will not be applied as a result of the earning capacity? This means we are going to be faced with the possibility that the 90 per cent will not be implemented but in some instances will be less than 90 per cent as a result of the earning capacity of the worker.

Mr. Cain: Do you mean less than a full supplement?

Mr. Lupusella: Right.

Mr. Cain: That is quite likely, yes.

Mr. Lupusella: This is something I do not appreciate. The other concern I have is that we are talking about the net average earnings after the accident. The question which follows is about the recurrence instance of the accident. Is it incorporated in subsection (6) as well, or are we only talking about the initial accident of the injured worker? The question I would like to raise is whether or not the recurrence is also incorporated in that particular subsection.

Mr. Cain: This subsection exclusively refers to a supplement being paid in addition to a pension when a worker is unable to return to work or to work at some job with similarity to his pre-accident work. It really does not have anything to do with the recurrent section, which stands on its own.

Mr. Sweeney: Is it possible, under any circumstances, for a person to get a Canada pension benefit if he is back at work?

Mr. Cain: No.

Mr. Sweeney: I would think not. So the reference to Canada pension in subsection (6) would be only to those people who are not able to go back to work?

Mr. Cain: Yes. I am not quite certain of the CPP rules on this because sometimes people who do go back to work for limited periods of time are receiving very small amounts of money and CPP may continue, but I think that is an unusual situation, not the norm.

Mr. Sweeney: The general rule would be no.

Mr. Cain: So I say generally it is the person who is not working.

Mr. Laughren: I have another question that I do not understand here. Perhaps if I lay it out as a scenario you could help me.

A worker gets hurt and he is earning, for argument's sake, \$10 an hour. He goes back to work at \$8 an hour. That worker then would get 90 per cent of the difference of \$2?

Mr. Cain: Yes.

Mr. Laughren: So that he would get \$1.80 an hour, roughly.

Mr. Cain: Yes.

Mr. Laughren: The next year that worker gets a raise to \$10 an hour. Now there is no difference in the wage, pre-accident and post-accident.

Mr. Cain: That is true.

Mr. Laughren: Is that the reason for the phrase, "the board shall have regard to the effect of inflation"?

Mr. Cain: On pre-accident earnings.

Mr. Laughren: Right. What often happens is that even though he is now getting \$10 an hour, the worker is not earning as much as he was pre-accident because of the ravages of inflation, as they say, on his income. There is nothing in this section that requires the board to bump up that difference or keep that difference at \$1.80, is there?

Mr. Cain: Not to keep it at \$1.80, but the section indicates the board must inflate the pre-accident earnings appropriately and if that--

Mr. Laughren: Where does it say they must? I see "and the board shall have regard."

Mr. Cain: "For the effect of inflation."

Mr. Laughren: But they could regard it and reject it, could they not?

Mr. Cain: I suppose, in that word, but I assume by saying having regard for it, there is an expectation there, is there not?

Mr. Laughren: I am nervous about what the rule is there. It does not say you must match it. It does not say anything about that, does it?

Mr. Cain: I think what it is saying is that by one means or another you set an inflation rate or factor or whatever and apply that to the pre-accident earnings, perhaps at one time in the year. I would assume that would be the way it would be done, although it might not be.

Mr. Laughren: I am just nervous about what it means. Is there some way the legal counsel could help us? Not at the moment, I guess.

Mr. Chairman: This is one that is coming back from the ministry because of the 90 per cent thing. Perhaps that could be addressed at the same time.

Mr. Laughren: It does or can entirely wipe out the difference very quickly, in a couple of years.

Mr. Chairman: That one we will stand down.

Subsection 45(7): "Notwithstanding subsections 1 and 5,

where the impairment of earnings capacity for an older worker is significantly greater than is usual for the nature and degree of the worker's injury and, where in the opinion of the board, the worker cannot return to work and is unlikely to benefit from a vocational rehabilitation program which would lead to employment, the board may supplement the amount awarded for permanent partial disability with an amount not exceeding the old age security benefits that would be payable under section 3 of the Old Age Security Act (Canada), and amendments thereto, as if the worker were eligible therefor, and such supplement may continue until the worker is eligible for such old age security benefits or until the worker returns to employment."

Mr. Lupusella: I have great problems with the definition of "impairment of earnings capacity" that is "significantly greater than is usual for the nature and degree of the worker's injury." Maybe the legal counsel can give us an explanation. In my opinion, this particular wording is wrongly applied by the board to deny a lot of benefits.

This subsection states that where the impairment of earning capacity is significantly greater, we are extending this benefit to an older worker, but this definition exists now and affects other people who are not older workers. In this subsection, the board is recognizing that for different reasons, the degree of the disability of an injured worker is higher than what has been established. We are dealing with the degree of disability that is established clearly by the board. Maybe there are other factors that are rendering an injured worker more disabled than is usual for the nature and degree of his injury.

First, I would like more clarification about the wording. I do not understand it. I do not know the basis on which the board is applying such a definition to deny benefits to injured workers. What is the content of the definition? I understand the wording, but the way the board is applying the definition is wrong.

10:40 a.m.

I can give you an example. If I am defined by the board to be 10 per cent disabled because of the nature of an injury, the board might deny a supplementary pension because my earning capacity is not significantly impaired. I am using the opposite approach to what the board is implementing with the definition "...is not significantly greater than is usual for the nature and degree of the worker's injury." That means the board is using two scales to identify the degree of disability of an injured worker.

If the scale goes from one to 10 per cent, the board might come out with the position that the degree of disability that causes an impairment of earning capacity is not serious enough, which means the worker can easily go back to do the same job he used to do. This means that if the injured worker is faced with such a situation, he is not entitled to a supplementary pension because the degree of disability is not high enough.

In the past I wrote letters to the minister asking a specific question as to whether people faced with a disability

ranging from one to 10 per cent were entitled to a supplementary pension. His answer was: "They are entitled, but they have to co-operate with the rehabilitation department. They have to go and look for light jobs." That is an extra dimension of the entitlement to a supplementary pension.

The point is that the board is denying supplementary pensions because "the impairment of earning capacity" is not "significantly greater than is usual for the nature and degree of the worker's injury." This means that 10 per cent is not a high degree of disability and the injured worker can go back and do any kind of job. Therefore, he is not entitled to a supplementary pension.

The board is twisting the definition in the way it wants to deny benefits to injured workers. Is that true, or am I wrong?

Mr. Cain: You may recall that when we were in Hamilton, a young lady appeared before the committee with an ankle injury. She had six per cent. She was receiving a full supplement.

Mr. Lupusella: I was extremely surprised. It was one occasion when I said: "My goodness. What is happening with the board? Is it changing policies or what?"

Mr. Cain: You will also recall that during the committee hearings we provided you with a list of the number of claims in which people received full supplements compared to their percentage of clinical disability. While not the largest number, the largest individual group--I think it was 10 to 15 per cent--was receiving subsection 43(5) supplements.

Mr. Lupusella: I do not want to get into the same debate. Maybe it is a personal confrontation that I have between my constituents and the board. But each time a supplementary pension is denied to an injured worker, the board twists the definition so that "the impairment of earning capacity" is not "significantly greater than is usual for the nature and degree of the worker's injury." Therefore, the injured worker can go back and do the same kind of job because the 10 per cent does not disable him.

The board can twist such a definition in any way it wants. There is a lot of discretionary power based on such a definition. I would like to see the wording changed.

Mr. Laughren: I think I can help there.

Mr. Chairman: All right. We would appreciate your advice.

Mr. Laughren: I thought you might.

One way of resolving that problem--it is a problem, and it is not only between Mr. Lupusella's constituents and the board, believe me--would be to make a change in the fourth line. It should be changed from "and, where in the opinion of the board, the worker cannot return to work" to read "and, where there is no suitable work available." That is what is causing the problem.

The worker can have a 10 or 15 per cent disability and be getting a 10 or 15 per cent pension, but cannot go back to work because there is no suitable work or no modified work available. I used the example of the forestry worker yesterday. He might have only--he has more--15 per cent and he cannot be taken back into the forestry industry because of the nature of the work.

What Mr. Lupusella is saying is absolutely correct. It does discriminate against the worker through no fault of his own. He may be correctly assessed at 15 per cent, if you want to use the clinical rating system the board uses. A doctor might say, "That is probably as close as you can get to assessing a disability." But so what when no 85 per cent job is available?

It would make this subsection fairer if you changed it to put those words in. Of course, there is another change you could make, but this is the one we are dealing with right now; I will speak to another change in a moment.

Interjection: Will the board decide what is suitable work? How would you define suitable work?

Mr. Laughren: I guess they would have to, because they do now. We have defined suitable work in the definition section. Nobody else can--

Mr. Lupusella: Let me give you a clear example of that. An injured worker was told by board doctors that she could not perform specific kinds of jobs; she was supposed to just sit and perform light duties. She received a 10 per cent disability award. A supplementary pension was denied. I used the criteria given by the doctors at the rehabilitation hospital, that she was supposed to find a job where she was supposed to sit. A supplementary pension was denied to this woman, even though she was co-operating and looking around for a light job.

The 10 per cent degree of disability was not high enough to disable that woman, in the board's opinion; and even though the 10 per cent disability award was confirmed by board doctors and she could perform only specific tasks, I lost the appeal.

There is something wrong in the definition of impairment of earning capacity and the earning capacity is not significantly greater than is usual for the nature and degree of a worker's injury. I am sure we can find better phraseology to give a clear message to the board, without twisting such a definition to the detriment of the injured workers.

Mr. Laughren: I would like to take the word "older" out of there too.

Mr. Chairman: Yes, I suppose you would. We cannot. It would change the whole thing. This subsection was designed for the older worker.

Mr. Laughren: I understand.

Mr. Chairman: Let us deal with one point at a time.

Mr. Laughren: Okay.

Mr. Chairman: Any further comments on that? Is it actually an amendment, Floyd, that you wish to propose?

Mr. Laughren: Yes, and legal counsel was--

Mr. Chairman: Okay. We will get that amendment once it is drafted properly. Any discussion on that amendment? "Suitable and available" as opposed to "worker cannot return to work."

Mr. Sweeney: That is contingent, as has already been stated, on us having an acceptable definition for "suitable."

Mr. Chairman: That is right.

Mr. Sweeney: In other words, replacing the words "worker cannot return to work" with "no suitable work available." It depends on the word "suitable."

Mr. Chairman: That is right. It would depend on the word "suitable," which is subject to a further, stood-down subsection, a previous one.

Mr. Sweeney: Right.

Mr. Chairman: Is there anything else, while we are getting the amendment in order, to discuss on that subsection?

Mr. Sweeney: I could point out to the minister that in some cases the board is acting along those lines anyway when the board's own rehabilitation officers have worked with an injured worker and simply cannot place him. Even though the older injured worker is capable of doing something, there is nothing available that he is capable of doing. In a couple of cases I have been dealing with, they have used that definition anyway; so it really is not setting any precedent. That is not the wording being used, but that is the net effect.

Mr. Chairman: I think it was--

Mr. Sweeney: Excuse me, Mr. Chairman, I was going to say that for an older worker, as the minister probably well realizes, it is that much more difficult. The opportunities that are open are so much fewer. If he or she is injured on top of that, the door is just about closed.

Mr. Chairman: We have had a number of people wonder at what age a person is an older worker. I guess it was a purposely left without definition to leave flexibility to the board.

Mr. Sweeney: Yes. I think there was agreement generally, or a consensus, not to define it.

10:50 a.m.

Mr. Revell: Would you like me to read this into the record?

Mr. Chairman: Yes, please, if you will.

Mr. Revell: My writing is a bit messy here. This is Mr. Laughren's amendment: "I move that subsection 45(7) of the act, as set out in section 11 of the bill, be amended by striking out 'the worker cannot return to work' in the fourth and fifth lines and inserting in lieu thereof 'there is no work available to the worker that is suitable for the worker's capabilities.'"

Mr. Chairman: Is that what you said?

Mr. Laughren: That is it. Those are the precise words.

Mr. Lupusella: We should add to the amendment that the board must supplement, because even though he might be faced with this typical situation, the board in the final analysis will have the discretionary power even to deny the supplement pension. The board must supplement the amount awarded for permanent partial disability with an amount.

Mr. Revell: What you are suggesting is that where it says "the board may supplement the amount," you would like to change that to "the board shall supplement."

Mr. Lupusella: Yes, because even though we make the change proposed in this amendment, and even though the injured worker will be faced with this typical situation, the board still has the power to deny it.

Mr. Laughren: Is it harder to get into law school or out of law school?

Mr. Revell: No comment.

Mr. Lupusella: In other words, we are saying the injured worker has the right, but the board is the final judge and can deny that.

Mr. Revell: Would you like me to tack this on to your amendment, Mr. Laughren?

Mr. Laughren: Wait a minute now. It depends on the response of the minister. If the minister is willing to accept one without the other, we would want them separate. If he is willing to accept the package, then we might as well tie them together. I do not want to lock ourselves in until we know.

Hon. Mr. Ramsay: Gentlemen, I must advise that I am not prepared to accept either one of them.

Mr. Laughren: Really? The old inflexibility has returned.

Hon. Mr. Ramsay: That is right.

Mr. Lupusella: Just to satisfy my curiosity, on what basis are you denying the two amendments?

Hon. Mr. Ramsay: I think we are still trying in some measure to implement the wage loss system, which we are committed

to looking at in phase 2. We are chiselling away at it with these amendments.

Mr. Laughren: It is there anyway. What is this supplement if it is not paid?

Mr. Lupusella: Right. If you do not give such a right to injured workers, and the board eventually decides, what kind of right is that? Either you give it or you do not give it at all.

Mr. Laughren: You are the one who started it. We are just improving on it.

Mr. Chairman: Is there any further discussion on that amendment? Mr. Laughren.

Mr. Laughren: I am concerned about the blanket statement that something as reasonable as a worker having work suitable for his capacity is being rejected. What does that say? It says the board can say of the worker I used yesterday as an example, for instance: "He has a 15 per cent disability; let him go out and get a job. We are giving him a 15 per cent pension." What kind of nonsense is that?

I think we are going to have to take a whole look at--well, I will not say it, but I really do not understand why the minister is being so obstinate here. What are we trying to do? We are trying to say that the board cannot be arbitrary and that there must be work available for an injured worker before he can be penalized, before the board can say: "No, we are matching his income with his disability. Go away and leave us alone." That is what this subsection allows the board to do, and that is what the board is doing now. This is not a hypothetical case.

I do not understand that kind of thinking, I must say.

Mr. Sweeney: Can I raise a point with the minister? The situation which arises, or certainly could arise, on the wording that is here now could be a decision that an older, partially permanently injured worker could be told, "You are able to return to work." Yet the best efforts of the rehabilitation officers of the board are just not able to get anything he is capable of doing. As it stands, it could be argued that the board is following the legislation by not providing any supplement, because it is not a matter of whether or not there is something for the worker to do, but that somebody makes the judgement call, based upon his physical ability, that he can return to work.

It is the way the wording is there. "The worker cannot return to work." What does that mean? Is he not physically able to walk out the front door of his house and get to a job somehow? Is he not able to stand in front of a lathe and actually operate it?

Hon. Mr. Ramsay: Mr. Chairman, in response to Mr. Sweeney, Mr. Lupusella and Mr. Laughren, I am not prepared to accept either of these amendments. However, I would commit myself to taking this back and discussing it at length with senior

advisers to see if there might be a resolution to the problem, taking your concerns into account.

Mr. Sweeney: I think the wording that was suggested before is appropriate, but I am more concerned with the minister understanding that the wording as it is here can so easily be misinterpreted. The point I tried to make to the minister is that at the present time, at least in a couple of situations I have experienced personally, the board is trying to be reasonable, trying to take the other interpretation.

Let us go to the other extreme. An employer decides to appeal it. I can well see an employer's lawyer going into an appeal board and saying, "Look, folks, here is what it says; this guy is able to go to work," and the best interests of the rehabilitation officer and another officer of the board, trying to be more reasonable, overturned. I need not remind the minister that legislation that has come out of this Legislature and has ended up in a court, or some other crazy judicial body has resulted in a judge or somebody telling us: "I do not know what you guys intended but that is what it says. I am really not interested in what you intended. All I can make a judgement call or a decision on is what the thing says."

Mr. Lupusella: On the interpretation.

Mr. Sweeney: It really is not an interpretation when you get it that way.

If we never have an appeal from an employer, then maybe we do not have a problem. But surely we are trying to draft and phrase legislation in such a way that we eliminate potential problems if we can anticipate them, which we cannot always do. So if the minister is prepared to take it back with that factor in mind, that satisfies me.

Mr. Chairman: All right. Subsection 45(7) should also be stood down.

On subsection 45(8):

Mr. Chairman: Subsection 45(8) says: "A supplement awarded under subsection (7) shall be a weekly or other periodic payment and the total sum of such supplement and the award under subsection (1) shall not exceed the like proportion of 90 per cent of the worker's pre-accident net average earnings and, in calculating the amount of the supplement, the board shall have regard to the effect of inflation on the pre-accident earnings rate and to any payments the worker receives under the Canada pension plan."

Mr. Sweeney: This is essentially the same as subsection (6), is it not? The basic point behind it is essentially the same.

Mr. Chairman: Right. We have the same concern about 90 per cent, which has to be clarified.

11 a.m.

Mr. Lupusella: I think we are including something which is not legal. We are talking about people going back to work. Under the Canada Pension Plan Act, if a person returns to work, he has the obligation to advise the Canada pension plan that he has returned to work and, therefore, the Canada pension plan payments will be stopped. We are incorporating in a piece of legislation something I do not really foresee. We are talking about injured workers who will not be receiving the Canada pension plan if they return to work.

It is something the ministry must check by contacting the Canada pension plan. I think the legislation is wrong because I do not think we will be faced with injured workers going back to work and receiving benefits under the Canada pension plan at the same time; so we are incorporating something that is not really the law of the land.

Mr. Revell: Excuse me, Mr. Chairman. I am not sure I understand the point Mr. Lupusella is making. I understand that subsection 45(8) only operates in circumstances where subsection (7) operates. In subsection 45(7) the supplement is based on the premise that the worker is not returning to work. For the last several minutes we have been discussing the worker who cannot return to work.

Mr. Laughren: That would include Canada pension.

Mr. Revell: Yes. I assume he cannot return to work because of a disability provision, so the CPP can begin.

Mr. Lupusella: I am sorry. I apologize.

Mr. Chairman: You can save that argument until later, Mr. Lupusella.

Mr. Lupusella: I withdraw my statement.

Mr. Chairman: Let us stand down subsection 45(8).

On subsection 45(9):

Mr. Chairman: Subsection 45(9) says: "Notwithstanding subsection 40(3) or subsection (6) or (8) of this section, the fact that a worker is receiving payments under the Canada pension plan shall not be a bar to receiving payments under clause 40(2)(b) or subsection (5) or (7) of this section."

Mr. Lupusella: If I am not mistaken, I think subsection 40(3) was stood down.

Mr. Sweeney: Would it be a correct interpretation that the reception of CPP under this act would not prevent some kind of a supplement, but it still includes the possibility of a deduction because of CPP?

Mr. Chairman: I am informed that is correct.

Mr. Sweeney: Okay.

Mr. Chairman: Clause 40(2)(b) was stood down; that is right. Do you want to vote on this one?

Mr. Sweeney: It is all right. The principle is acceptable.

Subsection 45(9) agreed to.

On subsection 45(10):

Mr. Chairman: Subsection 45(10) states: "Notwithstanding subsection (1), where the worker is seriously and permanently disfigured about the face or head, the board may allow a lump sum in compensation therefor."

Mr. Laughren: I have one comment before you pass that, Mr. Chairman. I am wondering if it fair to say "face or head," if that is not too restrictive. I have seen two constituents who were both grotesquely disfigured in the same fire in a service station. They were both okay. It took a little bit of hassling, but they got the gross disfigurement award. Yet I can see a situation where neither of those workers might have been disfigured about the face or head.

The other aspects of their disfigurement are unbelievable, however. I will not put you through a description of them, but they are really bad. They are over their entire body. They have had all sorts of functional problems. In fact, they are so bad that this is a bit restrictive.

All I am saying is that it did not restrict these two people, but I can see where it could have if their faces had been spared disfigurement and the rest of their bodies had been disfigured. I do not think that "disfigured" is the right word for the other parts of their body, but they were badly burned. I am wondering whether it is possible to take out the words "face" or "head," because there can be some bad cases of scarring.

Mr. Cain: If I am not mistaken, in the case you describe where there were serious burns to other areas of the body--this is just for clarification--I believe the board did pay a lifetime pension of some sort.

Mr. Laughren: Oh, yes, absolutely.

Mr. Cain: To clarify it, and perhaps this is not acceptable, I think the idea of this subsection was that while we would pay a lifetime pension for the totality of the burns to the body, burns to the face and head are so serious for cosmetic reasons it was felt that even over and above the lifetime award some kind of lump sum ought to be provided. I think that was the rationale, although I do not know if that is the case.

Mr. Laughren: That is right. I am obviously not quarrelling with that, but if you saw these people's hands or arms, for example--I can see a situation where it would be ruled out because of the precise wording of this section. That is what is bothering me.

I guess I am really asking whether it would be acceptable to say, "Where the worker is seriously and permanently disfigured, the board may allow a lump sum in compensation thereof," taking out "face" and "head."

Mr. Lupusella: Subsection 45(10) talks about "seriously and permanently disfigured" injured workers. It is clear that in these particular instances the board must allow a lump sum. I have problems with the verb "may." The injury is serious and the board will again have discretionary power as to whether or not the lump sum must be given. I have problems with the wording. I would change "may" to "must," because it is a clear-cut case in which the injured worker is "seriously and permanently disfigured." You cannot have a different interpretation that the disfigurement is light. It is serious. Why should the board not give a lump sum? The board will have the discretionary power to give a lump sum.

Hon. Mr. Ramsay: Mr. Lupusella, I am sure no one has had more experience than you with respect to injured workers. Have you come across such a case as you are suggesting?

Mr. Lupusella: Yes.

Hon. Mr. Ramsay: How many?

Mr. Lupusella: Let us talk about 10 per cent of injustices when, in most instances, they do not get the right justice from the board.

Hon. Mr. Ramsay: I am talking about cases of disfigurement about the face or head.

Mr. Lupusella: In my own experience, the board gives a little lump sum. I have a constituent who had a motor blow up and he was disfigured all over his body. He was in the process of facing a divorce from his wife. He was burned all over except for his face. He was really lucky. All the skin was burned. He got just 40 per cent permanent pension for life. I do not know how the marriage has survived, because I think his wife had problems staying with him.

The other comment I would like to make is that there is no clear direction as to how much of a lump sum should be given to the injured worker. Maybe Mr. Cain can help us. What is the present policy on disfigurement?

Mr. Laughren: I think the maximum award is \$25,000. Is that right, Mr. Cain?

Mr. Lupusella: I am talking about Bill 101.

11:10 a.m.

Mr. Cain: Of course, there has to be a policy in Bill 101. This wording is exactly the same as in the current act. Therefore, one assumes that the policy currently in existence is the one that applies. It is quite an extensive policy. I would be more than happy to give you copies of it. It is in the board's policy book.

Mr. Laughren: What is the maximum?

Mr. Cain: It is based on maximum earnings in effect at the time of the rating or the time of the accident. There are four degrees of disfigurement. I am trying to find quickly if there is a maximum. Actually, it appears the maximums are based on percentage of disability as opposed to a dollar amount. No, that is not true. I am sorry.

Mr. Laughren: I thought it was \$25,000.

Mr. Cain: The way it is worded here is that after July 1, 1975, the disfigurement award for first-degree burns ranges from \$28.25 to \$47; second-degree burns, \$56.20 to \$75; third-degree burns, \$84.50 to \$103.25; fourth-degree burns, \$187.50 to \$234.50. Then that would have to be calculated into a lump sum because of course that is what it is.

Mr. Laughren: Wait a minute. You have me puzzled now. I thought the gross disfigurement award is completely on top of a permanent partial disability, totally separate.

Mr. Cain: It is. That is why I said the figures I quoted to you have to be interpreted into a lump sum because it is always a lump sum.

Mr. Laughren: Like a commutation?

Mr. Cain: Yes.

Mr. Laughren: Could you get a disfigurement award without there having been a pension attached to it?

Mr. Cain: No. I believe you have to have a pension in order to receive a disfigurement award. I am sorry, I am wrong. You do not have to have a permanent disability pension award to receive a disfigurement award.

Mr. Laughren: So you could get--

Mr. Cain: It is possible, yes.

Mr. Laughren: I could see a situation where somebody's face was--

Hon. Mr. Ramsay: I have a case right now of a person who is getting a lump sum but he is not getting a pension.

Mr. Cain: That is quite right. You do not have to.

Mr. Laughren: The way that act reads then, would the worker be able to choose between a pension or a lump sum disfigurement award?

Mr. Cain: No. To my knowledge, when it is given as a lump sum, it is provided as a lump sum. Then if by chance there is a clinical award that accompanies it, of course that is--

Mr. Laughren: Totally separate.

Mr. Cain: That is totally separate. This is a lump sum.

Mr. Laughren: That is different from any other principle. It is totally distinct, is it not?

Mr. Cain: That is why I took the opportunity to point out why the section was there. It was for purposes of cosmetics. Because the neck and face are on display, it was felt whenever this section was put in that there was something over and above a clinical award that should be provided.

Mr. Laughren: It is pain and suffering.

Mr. Cain: That is really why this is not provided when the burns are to other parts of the body. It was essentially made for that reason. For the other parts of the body, you would receive a clinical pension if there was some kind of impairment, I suppose much like any other injury. If you have a back injury that is or is not disabling, therefore you do or do not get a pension and so forth and so on.

Mr. Laughren: You can sure lead a miserable life with little or no compensation for it in this case.

Mr. Cain: I would think if the burns are very severe to other parts of the body, one is going to receive a clinical pension because there has to be impairment. You just cannot function that well with serious burns to the body.

Mr. Chairman: There are two points that have been raised and I have not had an amendment on either one of them.

Mr. Lupusella: To change "may" to "must."

Mr. Laughren: You had an amendment on my section.

Mr. Chairman: You made a suggestion, I think, towards that.

Mr. Lupusella: I would change "face" or--

Mr. Chairman: Change "face" or "head" or just remove "face" or "head."

Mr. Lupusella: Or remove them and replace them with "any part of the body."

Mr. Revell: I have taken the liberty of drafting two motions.

Mr. Laughren: Why do we not do it two ways then? Sooner or later the minister is going to get flexible. How about, "Notwithstanding subsection 1, where the worker is seriously and permanently disfigured, the board may allow a lump sum in compensation therefor"? That is first.

Mr. Revell: I have a motion that will accomplish that if I move that subsection 45(10) of the act, as set out in section 11 of the bill, be amended by striking out "about the face or head". That is your motion, Mr. Laughren.

Mr. Laughren: It might be helpful to the government party members of the committee if the minister tipped his hand as to how he personally would vote on this.

Hon. Mr. Ramsay: I personally would vote against the amendment because, as I stated earlier, it is still part of the dual award system and the matter of lump sum compensation is going to be covered in phase 2. I hate to keep bringing that up each and every time.

Mr. Laughren: Come on, it is already in here; it is already a lump sum.

Mr. Chairman: I am afraid you are going to have to bring it up just to remind certain members of the committee that those are the facts of life.

Mr. Laughren: Mr. Chairman, I want to remind you and the minister that this section is already in here as a lump sum award. What in the world are you talking about? All we are saying is to change it so it is not so restrictive; that is all. We are not creating a new dual award system here; it is already in here as a lump sum award.

Mr. Chairman: Shall that amendment carry?

Amendment negatived.

Mr. Chairman: The second amendment.

Mr. Revell: This is Mr. Lupusella's amendment: "I move that subsection 45(10) of the act, as set out in section 11 of the bill, be amended by striking out 'may' in the third line and inserting in lieu thereof 'shall.'"

Mr. Chairman: Shall that amendment carry?

Amendment negatived.

Mr. Lupusella: Mr. Chairman, at this point in time I think I have to raise a point of order. I cannot boycott the committee, because the process will take place anyway, but we are talking about rights of workers; we want to give this right. We are dealing with serious injuries; we are not dealing with cheaters. If we allow the board to have the discretionary power by using the verb "may," I think I should not even sit with this committee.

If the minister's will is to be open and flexible on certain things that should be changed for the sake of good legislation, I do not think even a lawyer would accept this type of legislation giving this kind of discretionary power.

The board might encounter situations in which injured workers are seriously and permanently disfigured, and even though the minister is going to have a great trust in the people applying this type of legislation that the board will never deny such benefits, the board has the power to deny the lump sum in compensation when it is dealing with injured workers who are seriously and permanently disfigured.

I am really upset about this type of process. Before, we had an opportunity for the employers to appear before the committee, and they said: "We are faced with so many injured workers. They are playing around with the system. They want to get money. They are not seriously injured." Here, where we are dealing with clear-cut cases of people who are seriously and permanently disfigured, I think I should leave this committee.

Mr. Laughren: Do not do that.

Mr. Chairman: Shall subsection 10 carry? Carried.

Subsection 45(11): "Where, at the time of the worker's death, the worker was in receipt of an award for permanent disability which the board has rated at 100 per cent or, but for the death, would have been in receipt of an award for permanent disability at the rate of 100 per cent, a dependant of the worker is entitled to compensation from the time of the worker's death as if the death of the worker had resulted from the compensable disability for which the worker received or would have received the permanent disability award."

11:20 a.m.

Mr. Laughren: I think I understand that correctly. If the worker is on 100 per cent disability, the dependants are treated the same way as if the worker were killed on the job. It is as simple as that, is it not?

Mr. Chairman: Is that carried? Carried.

Subsection 45(12): "For the purposes of this section, 'permanent disability' means any physical or functional abnormality or loss, and any psychological damage arising from such abnormality or loss, after maximal medical rehabilitation has been achieved."

Mr. Laughren: Why is that in there?

Dr. Wolfson: That is to expand the definition of 'permanent disability' to include psychological impairment.

Mr. Laughren: Why would it be in this section, though, rather than in the definition section?

Dr. Wolfson: Perhaps legislative counsel could comment on that. Sorry, he is not here.

Mr. Sweeney: Why does it say "for the purpose of this section"? Is it because this section deals with permanent disability?

Hon. Mr. Ramsay: That is correct.

Mr. Chairman: Shall subsection 12 carry? Carried.

On section 12:

Mr. Chairman: Section 12: "Section 49 of the said act is repealed."

Mr. Laughren: Mr. Chairman, I must read section 49 of the said act, just to get it out of my system.

Mr. Chairman: I would have assumed you would have done that before arriving here this morning, Mr. Laughren, because you knew we would be passing this point today.

Mr. Laughren: I did, indeed. This is the section 49 that we are repealing; this is Tory legislation:

"Where it is found that the widow or common-law wife to whom compensation has been awarded is a common prostitute or is openly living with any man in the relation of man and wife without being married to him, the board may discontinue or suspend compensation to such widow or common-law wife or divert such compensation in whole or in part to or for the benefit of any other dependant or dependants of the deceased worker."

Is it not good to have that repealed? I wonder if it has ever been invoked.

Mr. Cain: Yes.

Mr. Laughren: It has?

Mr. Cain: Under our current act, if someone remarries or lives in a common-law relationship, of course the pension is stopped.

Mr. Laughren: That is it, yes.

Section 12 agreed to.

On section 13:

Mr. Chairman: Section 13: "Section 50 of the act is repealed and the following substituted therefor:

"50(1) Where a worker is entitled to compensation and the worker's spouse or the worker's child or children under the age of 19,

"(a) is or are in receipt of public or private assistance in Ontario; or,

"(b) is or are entitled to support or maintenance under the order of a court that in the opinion of the board is enforceable in Ontario,

"the board may, where clause (a) applies, divert the compensation or a reasonable portion thereof for the benefit of the spouse, child or children and, where clause (b) applies, the board shall divert the compensation in accordance with the court order to the extent that there is default made under the order after this section comes into force."

Mr. Sweeney: I do not have any trouble with (b), that should logically follow, but under (a) is it not possible that there could have been a separation and for whatever reasons--I do not know what they are, because they are all unique and individual--there could have been no financial relationship between the spouses and now, because there is a compensation payment, a financial relationship is established which did not exist before?

I am not sure I understand the legal right to do that. Clause (b) is obvious, because there is an order, but there is no order of any kind attached to (a).

Hon. Mr. Ramsay: Maybe I can just read to you some of the notes I have here and see if this responds.

Mr. Sweeney: I just do not understand the legality of it; that is really what it amounts to.

Hon. Mr. Ramsay: If a worker defaults upon court-ordered support, maintenance or alimony payments, a portion of his or her benefits shall be diverted in satisfaction of the default. Currently the act leaves such diversion entirely at the board's discretion.

Mr. Sweeney: Excuse me. That is what clause 50(1)(b) says.

Hon. Mr. Ramsay: The amendment ensures that a court order for support or maintenance payment shall be enforced against the injured workers receiving Workers' Compensation Board pensions. This reflects the concern of the Ministry of the Attorney General that the Workers' Compensation Board shall not have authority over the enforcement of court-ordered support or maintenance.

As drafted, the amendment permits the board to divert all or a portion of the worker's benefits in satisfaction of the court order.

Mr. Sweeney: Where does clause 50(1)(a) come into play?

Dr. Wolfson: The section provides that where clause (b) applies, the board's discretion is removed and the board shall divert the compensation in accordance with the court order.

Where clause (a) applies, what this section does is empower the board, where in its discretion it thinks it is appropriate, to divert compensation to a spouse or a dependent child where they are in receipt of welfare.

Mr. Laughren: In its wisdom.

Dr. Wolfson: In its wisdom. The nondiscretionary part of the section is simply with respect to the court order, as you have identified, but nevertheless it does empower the board to divert compensation payments where the spouse is on welfare.

Mr. Laughren: Is that not stretching a bit the authority or the jurisdiction of the board, the social policy that the minister does not like to see it do?

Mr. Sweeney: It is entirely possible under clause (a) that no other agency has ordered a payment, and I have no idea why. As I say, I think clause (b) covers the order principle, but it is possible under clause (a) that there is a separation and there are no financial arrangements or financial orders of any kind from anybody--that not even the Ministry of Community and Social Services has required it. Then all of a sudden the board is going to come along and make a decision that it is going to require it.

I have to ask, under what? Quite frankly, I do not have any great problems one way or the other. I am just saying that I do not see how legally you have the right to do that, or whether it is proper for us to give the board that right. I realize we can do it, but--

Mr. Revell: I point out that the proposed clause (a) is a rewriting of the existing clause (a), except that it would remove one of the conditions under the existing clause 50(a), that the worker has to be residing outside of Ontario. That restriction is removed.

Mr. Sweeney: But it goes on to say, "or are apt to become, a charge upon the municipality where they reside, or upon private charity."

Mr. Revell: To that extent, the present clause (a) is much wider than the proposed clause (a), because under the existing clause (a) the fact that they may become a charge can lead to diversion, but under the proposed clause (a) they have to be in receipt of public or private assistance, i.e., welfare.

Mr. Sweeney: The problem I have with this is that whether we are looking at the old clause (a) or the new clause (a), we are dealing with a situation where public assistance is involved--the Ministry of Community and Social Services, whether it is family benefits, general welfare or whatever. That is the basic taxation-supported structure.

Now we are moving into an insurance type of program that has nothing to do with the tax-supported social system, and we are saying they are able to come along and overlap that.

Mr. Revell: I cannot answer that point. I was pointing out where the proposed clause (a) comes from and what its roots are. One aspect of it is a little narrower; i.e., it can only apply now where the spouse or child is in receipt of public or

private assistance, whereas at the present time if there is a possibility of public assistance being awarded, there can be a diversion of funds.

Mr. Sweeney: I know what it says. I just do not know how the blazes they get that right. I must be missing something totally.

11:30 a.m.

Mr. Hess: Clause (b) deals with the case where there has actually been an award of a court, but I believe there have been a number of cases where there have not been court orders obtained, although a wife and children have been abandoned or deserted.

This would cover the case where a worker has abandoned or deserted his wife and children, there has been no court order and obviously they do require funds in order to live. It would enable the board, when it became aware of those circumstances, to divert some of the compensation for the aid and assistance of a deserted wife and child who have not obtained a court order in that regard.

To my mind, there is nothing fundamentally shocking about it.

Mr. Sweeney: The distinction I am trying to make is that I have no qualms whatever about the appropriate body making an order. In other words, a spouse should support his or her spouse and children. I have no problem with that at all. And if there is any desertion aspect to it, then somebody has got to go after them.

My question is that until the appropriate authority has made such an order, by what possible right does an agency such as the Workers' Compensation Board take it upon itself to make such an order? That is why I am having difficulty.

Mr. Hess: I see.

Mr. Sweeney: It is not that it should not be done. I totally agree that it should be done. I personally would be very upset if it were not done; but I am just not sure the compensation board is the appropriate body to do it all by itself, and that is what we are doing here. I was not even aware that was in the legislation. Maybe it is time we should look at it. Unless there is something left there again that I am not aware of or that has been happening--

Mr. Cain: I do not know if I can shed a great deal of light on it, but as has been stated, it is basically just continuing legislation that exists today, although perhaps a little narrower. It is obvious that the board's first responsibility and obligation is to the injured worker, but I think our discussions in previous days about dependants of workers who have died have shown that there has always been a grave concern for workers' families under certain circumstances.

This is one place, apparently out of the past, where the idea surfaces that if a worker is separated from his family and is not providing at least a modicum of support, the board should look

at it. Fortunately, this does not arise all that often. When it does, we endeavour to balance it so that the injured worker does not have so much taken away that he cannot continue to survive economically. I think that is the prime issue.

Mr. Sweeney: Okay. If this legislation is valid then I would pose a question to the minister. Why would we not also say that any employer has the right to do the same thing? Why should a board in no way related to the social assistance funding mechanism of Ontario have the power to do this kind of thing, apart from the legitimate authority of the court, the Ministry of Community and Social Services or anyone else within our society or political system deemed to have the power to make those kinds of decisions?

Why not say that an employer would have that power? I am not suggesting that by the way, but why not? Why does it not logically follow?

Mr. Laughren: Mr. Chairman, you will excuse my profound scepticism, but I want to tell you something. This is a hypocritical section of the bill. Since when has the board shown all this great concern for the children of injured workers? We allow sections to remain in this bill that allow workers 15 per cent disability, the unemployed and on welfare, and I do not see any tears there. Excuse me, but I cannot buy this great concern all of a sudden on the part of the board for the spouse of someone who is on social assistance when the worker is receiving compensation.

I am sorry, but you cannot have it both ways. You cannot express all of this great concern here. I am telling you I do not understand where you are coming from on this. If you are going to be consistent, fine. If you are really concerned, if this is legitimate and not hypocritical, then let it run throughout the bill, not allowing yourselves to pick and choose when you think it might demonstrate some concern on your part in the eyes of people who might be reading the act.

What a lot of nonsense. This is the silliest part of the entire bill. You have no right to do this. Since when has this great social concern entered the bill? Since when is right here in this section; that is all. It does not ring true.

I am not going to be part of something so hypocritical. If it ran throughout the bill, fine, I would buy it. I would say, "Right, exactly, we should have this kind of social policy in Ontario." I would put it to you that it is already out there through the court order system. Excuse my cynicism, but I am afraid I know where you are coming from.

Mr. Hess: Going on to another matter, Mr. Sweeney, section 19 of the existing act assists in the explanation of why a section such as section 50 is required. It expressly provides that it is the board that must approve any diversion of compensation. In other words, it is not attachable, assignable or anything. No court can, by any order, affect compensation that is being paid by the board under section 19.

Without some section such as section 50, it would never be able to be taken away from the worker.

Mr. Sweeney: I think, Mr. Hess, that is covered in clause (b).

Mr. Laughren: I have no objection to clause (b).

Mr. Hess: No, but even under clause (a) it could never be. Nothing that any public agency could do would affect the compensation payable to a worker.

Mr. Laughren: A court order.

Mr. Hess: Unless a public agency got a court order, but even a court order is no good under section 19. That is what I am trying to point out to you.

Mr. Sweeney: Yes, but would section 50 not overrule section 19? Does not the specific overrule the general?

Mr. Hess: Yes. My point is that section 50 would act as an exception to the general language of section 19.

Mr. Sweeney: But 50(b), not necessarily 50(a). That is the point I am trying to make.

Hon. Mr. Ramsay: Can I shortcut the circumstances here?

Mr. Hess: I am suggesting to you that clause 50(1)(a) would also have an effect upon the provisions of section 19. That is all I am trying to relay to you.

Hon. Mr. Ramsay: We are prepared to take a look at that and determine whether or not clause (a) should be in there or should be deleted.

Mr. Chairman: Subsection 50(1) should be stood down.

On subsection 50(2):

Mr. Chairman: Subsection 50(2) says: "In this section, 'spouse' means a spouse as defined in part II of the Family Law Reform Act."

Mr. Sweeney: Which is? Has somebody got a copy of that?

Mr. Revell: This is the widest definition that is used in the Family Law Reform Act. This is the definition that "'spouse' means a spouse as defined in section 1." I can go back through that, but this is also including either the man and a woman not being married to each other who have cohabited continuously for a period of not less than five years or in a relationship of some permanence where there is a child born of whom they are the natural parents and have so cohabited in the preceding year and either of a man and woman between whom an order for support has been made under this part or an order for alimony or maintenance has been made before this part comes into force.

11:40 a.m.

I can go back through the other part of the definition, but that is essentially people who are married to each other are spouses and so on. The reason we need a different definition of "spouse" here to the definition we considered earlier in these committee deliberations has to do with the fact that for most purposes "spouse" under this act relates to the relationship at the time of death of a worker. Of course, in this circumstance we are dealing with spouses who are very much alive.

Mr. Chairman: Shall it carry?

Subsection 50(2) agreed to.

On section 14:

Mr. Chairman: Section 14 reads: "Subsection 55(2) of the said act is repealed and the following substituted therefor:

"(2) The Corporations Act does not apply to the corporation and, subject to the provisions of this act, the corporation shall have the capacity and powers of a natural person."

Mr. Laughren: Take out the word "natural."

Mr. Chairman: Shall it carry?

Mr. Sweeney: Just a minute.

Mr. Laughren: Substitute it with "abnormal."

Mr. Sweeney: I do not understand the legal language that is being used here. Under the existing act it just simply says "the Corporations Act does not apply." What is the significance of the words that are added?

Hon. Mr. Ramsay: Maybe I can respond to that. The significance of this amendment is that the board will now be empowered, first, to pay interest; second, to enter contracts; and, third, to sue and be sued in its own name. More generally, the board will have all the powers which legal personality confers. I can read that to you, but I cannot explain it to you.

Mr. Sweeney: There are certain things you cannot do to a corporation or to the members of a corporation. Does this override what you can and cannot do to a corporation? I get a sense of being contradictory. In other words, my sense is that the Corporations Act protects in certain ways, but by then applying the term "natural person," that takes away those protections. I am kind of confused.

Mr. Hess: I must confess I am not that versed in the Corporations Act. I believe that first part of the section is directly taken from the existing section 55.

Mr. Sweeney: Yes. The existing section simply says the Corporations Act does not apply to the board.

Mr. Hess: Yes.

Mr. Sweeney: It is the last two lines of this amendment that are different.

Mr. Hess: I think the minister has put it correctly. Without the concluding words there can always be an argument that whatever the board is doing, unless it is found squarely within the four corners of the act, it has no legal capacity to do.

Mr. Riddell, the board's solicitor, should be here to speak to this particular section. As I recall the discussion, it was his view that there had been certain occasions on which the board tried to do something--I think the minister mentioned paying interest or things such as that; I have forgotten--and they had no expressed powers in the section granting to the board powers, and I have forgotten the section which deals with that.

If one had to list everything that one could conceivably think that the board should be given power to do, it would take a very long list indeed. That is all overcome by giving the corporation, subject to any limits within this act, where it says it cannot do this or it can only do that in certain circumstances, by simply saying it has the capacity and powers of a natural person as though it were one individual person.

Mr. Sweeney: Subject to the provisions of this act. It does not allow it to override the act itself.

Mr. Hess: That is right.

Mr. Sweeney: All right.

Mr. Chairman: Shall that carry?

Section 14 agreed to.

On subsection 15:

Mr. Chairman: Subsection 15(1) states: "Sections 56, 57 and 58 of the said act are repealed and the following substituted therefor:

"56(1) There shall be constituted for the management and government of the corporation and for the exercise of the powers and performance of the duties of the board under this or any other act a board of directors the members of which shall be appointed by the Lieutenant Governor in Council and which shall consist of a full-time chairman, full-time vice-chairman of administration and not less than five and not more than nine part-time members who shall be representative of employers, workers, professional persons and the public."

Mr. Laughren: There is no requirement that there be any consultation with anybody, is there? I hate the thought of the Lieutenant Governor in Council deciding in his infinite wisdom who shall be representative of workers in Ontario.

Hon. Mr. Ramsay: Mr. Laughren, I am prepared to receive recommendations from any and all groups and individuals. In the final analysis, I suppose that after due consultation I will make recommendations to the Lieutenant Governor.

Mr. Laughren: That is right, but there is no requirement for you to do that. Who knows whether we will always have such an enlightened Minister of Labour?

Hon. Mr. Ramsay: Can I get a copy of Hansard? I want to frame that.

Mr. Laughren: He said with a straight face.

There is no requirement that the Lieutenant Governor in Council consult with anybody.

Hon. Mr. Ramsay: No, but I think if you look at any parallel legislation, there is always the consultation, the recommendations and so on.

Mr. Laughren: Does this fall under the category of patronage?

Hon. Mr. Ramsay: I would not say so.

Mr. Laughren: I have trouble keeping the distinction between Liberal patronage federally and Conservative patronage provincially and how it relates to appointments to the Workers' Compensation Board in Ontario. It is all mixed up in a blur in my mind. I wonder if somebody could sort that out for me.

Mr. Chairman: This is hardly the forum where we should sort that out for you. Perhaps we can discuss it later over a cup of coffee.

Mr. Laughren: No resemblance at all?

Mr. Kennedy: Do you remember what Stan Randall said?

Mr. Laughren: No.

Mr. Kennedy: Stan Randall said, "We have not had patronage here in Ontario since the days of Mitch Hepburn."

Mr. Sweeney: He said it with a straight face.

Mr. Kennedy: That clarifies that point.

Mr. Chairman: That is qualified. Is there any further discussion?

Mr. Laughren: You are not prepared to change that so that it would say "after consultation with injured workers groups and organized labour in the province of Ontario."

Hon. Mr. Ramsay: I do not feel it is necessary.

Mr. Laughren: I am sure you do not. This gives you total flexibility to appoint whomever you like. You might even reappoint John Smith to the board. Is that a possibility?

Hon. Mr. Ramsay: I do not know John Smith.

Mr. Laughren: He is a former Conservative member from Hamilton.

Hon. Mr. Ramsay: Oh, I do. Excuse me.

Mr. Laughren: He would be deeply offended if he knew you said that.

Hon. Mr. Ramsay: I do know him. I have to correct that.

Mr. Laughren: I will not tell him.

Hon. Mr. Ramsay: I ran into him at the airport in Sault Ste. Marie about a month ago. That is the first time I have met him.

Mr. Laughren: You were not the minister who appointed him.

Mr. Chairman: Is there any further discussion on subsection 56(1).

Mr. Sweeney: Is there any intention of a way in which the nine would be broken down among the four groups mentioned?

Hon. Mr. Ramsay: We have not got into that yet.

11:50 a.m.

Mr. Sweeney: I think the minister will well recall that some of the witnesses who appeared before us indicated that injured workers or workers generally would hopefully expect some kind of overall balance on the board if they had one member and the other 11 people on the board could be construed as being more pro employer. The nine does give flexibility.

Hon. Mr. Ramsay: I can only say that my intentions are honourable. I hope that will be reflected in the final makeup of the board.

Mr. Laughren: I wish the two gentlemen were not here when I say this because it appears funny to say it when they are here. Since we started debating the reform of legislation, the people who have been the most helpful to the committee have been with the Association of Injured Workers' Groups. They have suggested amendments and clarified what they see as problems. It would therefore be appropriate to let them decide whether someone from the Association of Injured Workers' Groups in the province should be on the board.

Hon. Mr. Ramsay: I stand to have them correct me if this is not the case, but during one of our meetings I was asked a question and I indicated I would be happy to hear from you people about representation. Am I correct when I say that? Yes. I have already talked to these people.

Subsection 56(1) agreed to.

On subsection 56(2):

Mr. Chairman: Subsection 56(2) says: "The chairman of the appeals tribunal shall be a member ex officio of the board but shall not vote on any matter."

Mr. Laughren: That section should be deleted because the chairman of the appeals tribunal should not be part of the management of the board. The chairman of the appeals tribunal should sit in judgement on the appeals and not be subjected to the persuasion of the rest of the board. It is a mistake, even though I know it says "ex officio," to include that person on the board.

That person would still be identified with the management as being part of the board of directors. The person is an employee of the board. It is not like an outside director. For those reasons I shall vote against the subsection.

Mr. Sweeney: I got the distinct impression a while back that the minister himself had reservations about this kind of connection. There was some comment made, not on this legislation but earlier in our hearings, that it would be reviewed on the basis that the argument originally made to us, that the chairman of the appeals tribunal should have some sense of the overall direction of the board, did not require him to be even an ex officio member of the board.

The board of directors can consult with that person in any way it wants since, as has been pointed out, he is their employee anyway. I thought we had arrived at the conclusion that there was no valid reason for him to be a member and the public perception that he could be unduly influenced by the board simply was not worth the price. It was too high a price to pay for too little gain.

Hon. Mr. Ramsay: I do not recall that. If you say it happened, it undoubtedly did, but I do not recall it.

Mr. Sweeney: That is not the minister's sense of it.

Hon. Mr. Ramsay: I recall we talked about the matter of a quorum and things of that nature. We made some adjustments in that respect.

Mr. Sweeney: And the right to veto. We have already ruled on that.

Mr. Chairman: There is an amendment coming up under section 24.

Mr. Sweeney: Let me come back again. The appeals tribunal is a new direction in this legislation and it is a valuable one, something to be supported and encouraged. Whatever value the membership of the chairman of the tribunal would have on the board of directors seems to be so outweighed by the perception that he would be unduly influenced by the board. Why are we doing it?

Hon. Mr. Ramsay: Obviously, you were correct. We did discuss this. Mr. Cain has reminded me of it. We did change it. Originally, the chairman of the appeals tribunal was going to be a voting member of the board. That was the original intention, but it has been changed so that he would be ex officio. That was the concession we made to them.

Mr. Sweeney: Why do we want him on the board at all? What is the thrust behind that? What is the purpose of it?

Hon. Mr. Ramsay: I am afraid I cannot answer that directly.

Mr. Sweeney: Since it is a whole new structure, let us start off on the right foot, instead of muddling along for two or three years and coming back and making some changes later on.

Hon. Mr. Ramsay: I thought we were making some changes that would--

Mr. Sweeney: That is a change. I will grant that.

Hon. Mr. Ramsay: We committed ourselves to look at it, and we did; we changed it from voting to ex officio.

Mr. Sweeney: Can the minister himself think of any good reason for doing this that is not too high a price to pay?

Hon. Mr. Ramsay: I cannot do that. I never sat on the board, and I have never been around when they have met. I have never discussed this matter with them. Off the top of my head, I can honestly say I cannot think of any good reason, but I am sure there are some reasons.

I do not want to undermine the discussions that have gone on both with senior people in the ministry and those of the board in this respect. I asked them to look at it, and to look at it with respect to the voting aspects of it. They did and they came back to me with the revision that the person be ex officio rather voting.

Mr. Laughren: I assume you want it stood down until you have had a chance to find out for yourself, do you?

Hon. Mr. Ramsay: I would not mind doing that.

Mr. Sweeney: Perhaps the minister could find the answer to the question, what is the advantage of his being even an ex officio member? What is the purpose of doing that?

Hon. Mr. Ramsay: No problem. That is a good question.

Mr. Sweeney: In so far as it is simply a matter of communication, keeping each other informed, there are so many other ways to do that.

Hon. Mr. Ramsay: We will look at it.

Mr. Chairman: That will be stood down.

Subsection 56(2) will be--

Hon. Mr. Ramsay: Here I am concerned about prolonging these discussions, but I will do it myself for a moment. To cast some further light on it, the white paper indicated that the Lieutenant Governor in Council shall appoint to the corporate board for terms not exceeding five years not more than nine directors, one of whom shall be designated chairman, another of whom shall be designated vice-chairman of administration and another shall be the chairman of the appeals tribunal appointed under section 52.

This is the recommendation of the white paper, and it is coming back to me now. Your concerns about sitting as a voting member came up earlier. We concurred with that reservation and changed it accordingly. Now it seems we have a further reservation, and we are prepared to look at it.

Mr. Sweeney: I remind the minister of the number of witnesses that came before us who expressed grave reservations about this in terms of the public perception it would create. If you are going to start with a new structure that is intended to be more open, more independent, then why shackle it at the very beginning with this kind of perception?

Hon. Mr. Ramsay: I will follow up.

12 noon

Mr. Chairman: Subsection 15(2) of the bill reads: "The terms of office of the commissioners of the board, except the chairman and the vice-chairman of administration, in office immediately before the coming into force of this section are terminated."

Hon. Mr. Ramsay: I believe the legislative counsel would like to recommend the insertion of one word here.

Mr. Revell: Actually two words, Minister.

Hon. Mr. Ramsay: Two words, okay.

Mr. Revell: There is a technical amendment, I believe, required in subsection 15(2) of the bill, and that would be to insert before "Board" in the first line, "Workers' Compensation." The way this bill is drafted, subsection 2 will not be incorporated into any revised or consolidated version of the Workers' Compensation Act. It is strictly a one-shot provision and "board" is not defined for the purposes of the bill, only for purposes of the act itself. Perhaps a member of the committee is prepared to move the amendment.

Mr. Chairman: Mr. Havrot moves that subsection 15(2) of the act be amended by inserting the words "Workers' Compensation" before the word "Board" in the first line.

Mr. Laughren: Who is being so lovingly protected here, Mr. Alexander and Mr. MacDonald?

Hon. Mr. Ramsay: They are the current office holders, yes.

Mr. Laughren: What about all these other commissioners? Do you have no compassion at all? What is going to happen to them? They are your friends. Seriously, what is going to happen to these people?

Mr. Sweeney: Brian Mulroney is going to look after them.

Hon. Mr. Ramsay: I have no idea.

Mr. Laughren: You do not care, do you? Boy, you are a real hard-nosed son-of-a-gun, are you not? That is remarkable. All these commissioners floating around out there will be unemployed. I wonder for how long.

Hon. Mr. Ramsay: Maybe there will be some openings in your research department.

Mr. Laughren: That is very interesting. Maybe there will be openings as workers' advisers, he said tongue in cheek. Or more appropriately perhaps as--

Mr. Chairman: Employers' advisers.

Mr. Laughren: --employers' advisers. Very good, Mr. Chairman.

Hon. Mr. Ramsay: That is something I have not thought about.

Mr. Laughren: What is that?

Mr. Sweeney: Employer advisers.

Mr. Chairman: A point well taken.

Mr. Laughren: That is very interesting. There are some more patronage opportunities for you. I wonder why these two were picked. Was it because these are the only two who were commissioners?

Mr. Chairman: They are full-time, are they?

Hon. Mr. Ramsay: The commissioners are gone in the first place.

Mr. Laughren: But it says, "Terms of office of the commissioners, except the chairman and vice-chairman," so that implies they were commissioners. Technically it does, does it not?

I am sorry. The way it reads now, "The terms of office of the commissioners of the board, except the chairman and the vice-chairman," does it not imply that those two people are commissioners?

Mr. Hess: Yes, they are.

Mr. Laughren: They are commissioners. Are they the only part of the management who are commissioners? Is that why it reads like this?

Mr. Revell: Under the present act, section 57, "The Lieutenant Governor shall designate one of the commissioners to be chairman, one to be vice-chairman of administration and one to be vice-chairman of appeals and not less than two and not more than four to be commissioners of appeals respectively, and such persons shall constitute the board."

Because of the restructuring of the board--I cannot speak to the wisdom of the two exceptions that are made--

Mr. Laughren: I would hope not.

Mr. Revell: --it is necessary, certainly with respect to the other appointed commissioners, to restructure the board in accordance with subsection 56(1) to remove the existing directors from office.

Mr. Laughren: To be very practical for a moment, let us assume that this bill becomes the law of the land on January 1, 1985. Would that mean that as of January 1, 1985, you would have Mr. Alexander and Mr. MacDonald in place, assuming they have not retired voluntarily, and that the other commissioners would then be in limbo unless or until they were appointed to the appeals tribunal or some other position within the newly-structured board? Is that correct?

Is that how you would read the bill? I am not asking for a value judgement. Is that the way it would work?

Mr. Revell: This is a piece of legislation that comes into force on proclamation.

Mr. Laughren: Right.

Mr. Revell: I would think that in the normal method, after royal assent and before proclamation, the necessary appointments would be made. I cannot speak for the Lieutenant Governor in Council, but there is nothing to stop the reappointment of any particular commissioner to the appeals tribunal or to the board itself.

Certainly I would assume that, just as in any other piece of legislation where there is a proclamation of some kind in the future, everything necessary to have the legislation in place on the day of proclamation would be done, and that is authorized under other legislation.

Mr. Laughren: I do not know whether Mr. Cain can answer this, but is insecurity running rampant at the board?

Hon. Mr. Ramsay: I do not think he should answer that.

Mr. Chairman: I do not think he should touch that one with a 10-foot pole.

Mr. Laughren: I do not think Mr. Cain should be insecure about that. Maybe there are others who should be.

Mr. Chairman: Shall that amendment carry? Carried.

Section 15, as amended, agreed to.

On section 16:

Mr. Chairman: Section 16 reads: "Section 59 of the said act is amended by striking out 'commissioners' in the first and second lines and inserting in lieu thereof 'directors.'"

Mr. Laughren: This section deals with the remuneration, benefits and expenses of the commissioners. What is that level now? What do commissioners get paid? Why would there be expenses and benefits in here?

Hon. Mr. Ramsay: Could you ask your question again?

Mr. Laughren: What do commissioners get paid? Are the commissioners the ones who sit on the appeals?

Hon. Mr. Ramsay: Yes. Are you asking what their salaries are?

Mr. Laughren: Yes.

Hon. Mr. Ramsay: I would have to get that information for you. I have a rough idea, but I am not quite sure of the normal expenses when they travel to various communities to sit on those appeals. Benefits are the normal benefits.

Mr. Laughren: I see.

Hon. Mr. Ramsay: Do you wish a list of the--

Mr. Laughren: No. It is more or less a question of interest.

Mr. Chairman: General interest.

Hon. Mr. Ramsay: It is public knowledge.

Mr. Laughren: Yes.

Hon. Mr. Ramsay: Public information.

Section 16 agreed to.

On section 17:

Mr. Chairman: Section 17 reads: "Sections 60, 61 and 62 of the said act are repealed."

Mr. Laughren: Why is this? Is it because it is using the word "commissioners" instead of "directors," or what? It has to do with the appointments; is that right?

Mr. Sweeney: It is all covered under section 56.

Mr. Laughren: Section 56?

Mr. Sweeney: You do not need it any more, with section 56.

Mr. Laughren: I see.

Hon. Mr. Ramsay: Section 56 deals with the appointment of the commissioners, the term of office of commissioners and removal or commissioners for cause.

Mr. Laughren: But where is the removal clause? We should make sure that is in there and maybe even strengthened. "A commissioner may be removed from office before the expiration of his term for cause." What if a director is a bad actor? How do you get rid of the director?

Hon. Mr. Ramsay: I think I did respond to a similar question in my opening comments last week, if I am not mistaken.

Mr. Laughren: I am surprised I would not have remembered, because I was hanging on every word.

Hon. Mr. Ramsay: I will get a copy of that from Hansard.

Mr. Sweeney: You have your brochure all printed.

Mr. Chairman: Subject to that information, shall section 17 carry?

Section 17 agreed to.

Mr. Laughren: Seriously, though, is there a clause somewhere that says they might be asked to leave? I was thinking of conflict of interest or something like that.

Hon. Mr. Ramsay: I am trying to find that here. Perhaps it was not, but we did address it.

Mr. Laughren: I am worried about it.

Hon. Mr. Ramsay: A person can be relieved of his responsibilities just as easily as he can be appointed to them.

Mr. Laughren: In case you found out that one of the directors was a plant from the employers' council or something.

Mr. Chairman: Or similar circumstances, yes.

On section 18:

Mr. Chairman: Section 18 suggests that subsections 63(3) and 63(4) of the said act are repealed.

Section 18 agreed to.

On section 19:

12:10 p.m.

Mr. Chairman: Section 19 reads: "Section 64 of the said act is repealed and the following substituted therefor:

"'64(1) In the absence of the chairman from Ontario, the chairman's inability to act, or where the office of the chairman is vacant, the chairman's duties shall be performed by the vice-chairman of administration.'"

Mr. Sweeney: What is the reference to Ontario? In the present legislation it says, "chairman from the province." Why do we have that in there at all?

Mr. Revell: In the absence from the head office region, which at present is Toronto.

Mr. Sweeney: It is the absence from Toronto, from Ontario? I thought it said the "chairman from Ontario." That is what it says, "In the absence of the chairman from Ontario." What is wrong with that? It is a very valid interpretation.

Hon. Mr. Ramsay: I did say in my opening statement that the normal three-year period for such appointments would be observed, although this does not preclude the rescinding of an appointment before that time, should the performance of an appointee prove to be unsatisfactory.

Mr. Sweeney: We really were not listening.

Mr. Chairman: There were some words you did not hang on to.

Back to subsection 64(1) of the act under section 19 of the bill. Are you satisfied with that? Shall it carry? Carried.

Subsection 64(2) says: "Wherever it appears that the vice-chairman acted for and instead of the chairman, it shall be conclusively presumed that the vice-chairman has so acted in the absence, disability or vacancy in the office of the chairman."

Mr. Laughren: Even though the chairman might be there, able and there be no vacancy.

Mr. Sweeney: It would have to apply to subsection 64(1) above, would it not?

Mr. Laughren: I do not think so. This is assuming.

Mr. Chairman: It is a presumption.

Mr. Laughren: If I were the chairman, I would be uneasy about that.

Mr. Chairman: I do not think you have to worry.

Mr. Laughren: If I were a chairman on the way up, I would be looking over my shoulder. It is like a minister and a deputy minister or, more appropriately, a parliamentary assistant--

Interjection: Much more appropriate.

Mr. Laughren: --who sees himself as being upwardly mobile.

Mr. Chairman: I do not think we can deal with that in this act.

Mr. Laughren: No?

Mr. Chairman: No.

Mr. Sweeney: We will deal with it in the corridors.

Mr. Laughren: That is right. The bureaucrats will deal with it.

Section 19 agreed to.

On section 20:

Mr. Chairman: Subsection 20(1) says: "Subsection 65(1) of the said act is amended by striking out 'A commissioner' in the first line and inserting in lieu thereof 'The chairman, the vice-chairman of administration and the chairman of the Appeals Tribunal.'"

Mr. Sweeney: Given that we have agreed to review the role of the chairman of the appeals tribunal on the board, this should be stood down at the same time.

Mr. Chairman: All right. It is stood down.

Subsection 20(2) says: "Subsection 65(2) of the said act is amended by striking out 'a commissioner' in"--

Mr. Sweeney: It is the same thing.

Mr. Chairman: It is the same thing. That will have to be stood down as well.

On section 21:

Mr. Chairman: Section 21 says: "Section 66 of the said act is repealed."

Mr. Sweeney: Is that the resignation of a commissioner?

Mr. Laughren: Because he is not a commissioner any more?

Mr. Hess: This relates to the functions in the appeals tribunal. This is all taken care of in the provisions relating to the appeals tribunal. The commissioners no longer have that function.

Mr. Laughren: That is right.

Section 21 agreed to.

On section 22:

Mr. Chairman: Section 22 says: "Subsection 67(2) of the said act is repealed and the following substituted therefor:

"(2) The board of directors may meet or hold meetings in any place in Ontario as is considered convenient."

Mr. Laughren: Perhaps you would consider a change there from "may" to "must," and instead of "as is," substitute "whether or not it is."

Mr. Chairman: Great idea. In lieu of that suggestion, shall section 22 carry?

Mr. Laughren: Wait a minute now. We are talking about the equivalent of a corporate board. I guess it is difficult to put it in the bill, but one thing I have often felt should happen is that the corporate board should move around the province and, from time to time, meet in other parts. I do not know if they do. If they do, it is done very surreptitiously.

Hon. Mr. Ramsay: I will encourage them to do so because I agree with you.

Mr. Laughren: I guess it is difficult to put it in the bill.

Hon. Mr. Ramsay: Yes, but as I say, I will encourage them.

Mr. Chairman: This gives them the authority to do so. Shall that carry? Carried.

Section 22 agreed to.

Hon. Mr. Ramsay: The first place would be Sault Ste. Marie and the second place would be Sudbury.

Mr. Laughren: That is assuming you allow them to meet. Shining Tree is preferred.

On section 23:

Mr. Chairman: Section 23: "Subsection 68(2) of the said act is amended by striking out 'commissioner' in the second line and inserting in lieu thereof 'director.'"

Section 23 agreed to.

On section 24:

Mr. Chairman: There is an amendment in section 24. I guess we better read this in and then have the amendment read in.

"Subsection 71(2) of the said act is repealed and the following substituted therefor:

"(2) A majority of the members of the board of directors for the time being, one of whom must be the chairman or vice-chairman of administration, constitutes a quorum for the transaction of business at meetings of the board and a decision of a majority of the board of directors, of whom the vote of the chairman or vice-chairman of administration must be one, is the decision of the board of directors."

Mr. Sweeney: Is this the one the minister has amended?

Mr. Chairman: Yes, it has been circulated.

Mr. Sweeney: To take out that veto.

Mr. Chairman: Would somebody like to move the amendment?

Mr. Gillies moves that subsection 71(2) of the act, as set out in subsection 24(1) of the bill, be amended by striking out "of the board of directors of whom the vote of the chairman or vice-chairman of administration must be one," in the fifth, sixth and seventh lines.

Motion agreed to.

Mr. Laughren: May I just draw the minister's attention to the fact that the opposition members are very flexible when he wants to make an amendment.

Hon. Mr. Ramsay: I have noted that. It is gratefully acknowledged.

Subsection 24(1), as amended, agreed to.

Mr. Chairman: Subsection 24(2): "Clause 71(3)(g) of the said act is amended by striking out 'and' at the end thereof."

Mr. Laughren: That says the board has the power to "establish, maintain and regulate advisory councils or committees, their functions and composition." I think I am correct. I do not understand that.

Mr. Hess: It is just the word "and" at the end of the clause.

Mr. Chairman: We will have to move into the next one now.

Mr. Laughren: Oh, sorry. Okay.

Subsection 24(2) agreed to.

Mr. Chairman: Subsection 24(3): "Clause 71(3)(h) of the said act is repealed and the following substituted therefor:

"(h) enter into agreements with the government of Canada or any province or territory in Canada, or the appropriate authority thereof, providing for co-operation in matters relating to compensation for or rehabilitation of workers disabled by injuries arising out of and in the course of employment;

"(i) subject to the approval of the Lieutenant Governor in Council enter into agreements with any state, government or authority outside Canada providing for co-operation in matters relating to compensation for or rehabilitation of workers disabled by injuries arising out of and in the course of employment; and

"(j) undertake and carry on such investigations, research and training and make grants to individuals, institutions and organizations for investigations, research and training in such amounts and upon such terms and conditions as the board considers acceptable."

12:20 p.m.

Mr. Sweeney: I recall there was some concern expressed with respect to clause 71(3)(j) in so far as a number of existing agencies already existed to do these kinds of research. The thinking was the limited--

Mr. Chairman: St. John Ambulance, etc.

Mr. Sweeney: I cannot remember the whole list, but two or three came before us. They are saying that with the funds that are available, if you spread them too thin, nobody will be able to do anything. I think the construction council was one, for example. I do not know who the others were, but I remember two or three. I do not know to what extent the board or the ministry has looked into that concern, whether they are prepared to respond to it in any way.

Mr. Cain: I am just trying to find it now--

Mr. Sweeney: I think the concern was that potentially it could just be spread so thin that nobody could really do anything. That was the concern.

Mr. Cain: I believe actually that the particular point you are making has to do with safety associations and the opportunity for the board to provide funds to other organizations in the safety field. I think that is another section. I am trying to locate it.

Mr. Laughren: It is the section under which the board provides grants at something like \$30 million to the safety associations.

Interjection: I think this is the section.

Hon. Mr. Ramsay: This is not the section, no.

Mr. Cain: It is another section. I am not doing a very good job of finding it.

Interjection: Section 123 of the act is still in place.

Mr. Sweeney: That just provides for their setting up and continuing operation and things like that. It does not provide for the amounts of research money that would be made available.

Mr. Welton: Subsection 4 empowers the board to make a grant toward the expenses of such a--

Mr. Laughren: Subsection 123(4). Is that what you said?

Mr. Welton: Subsection 123(4). That whole section 123 relates to the duties and financing--

Mr. Sweeney: I do not think there was any concern from these other groups that they would be eliminated from this kind of grant money for research purposes, but rather, that if there is going to be a fixed pot, and it was spread around too much, then nobody would have enough really to do a piece of research for example, on occupational disease, industrial disease.

Hon. Mr. Ramsay: Are these not administrative matters?

Mr. Sweeney: That was the question--

Interjection

Mr. Sweeney: No, but from a legislative point of view the concern was, do you really want to put something in here that is going to encourage a very wide distribution of a limited amount of research money? That was the issue, for what it is worth.

Hon. Mr. Ramsay: I am sorry. I am losing you somewhere--

Mr. Sweeney: Under the present legislation, the number of groups that can be funded by the board for research purposes is rather limited. They just cannot give money to anybody they want. This particular section is a new one which provides the board with the right to give money to several other kinds of organizations that never had the right to do so before.

The ones who are at present getting it appeared before us and said: "There really is not an awful lot of that money to go around as it is now. It is pretty difficult to do any good in-depth research and come up with valid responses even now." If you are going to take roughly the same pot of money and spread it much thinner, then the effect will be nobody will do anything that is worth while. If you are going to give some to the University of Toronto and some to Queen's University and some to this private group over there and some to another, I think their concern was that the pot would remain constant but the number of slices would increase.

Hon. Mr. Ramsay: There was another concern expressed from the management groups. That was the fact that the board, under this new legislation, will now be able to fund labour organizations.

Mr. Sweeney: That may be, but I do not recall that.

Mr. Gillies: Is this the section the Farm Safety Association was concerned about?

Mr. Sweeney: That was one of the ones.

Hon. Mr. Ramsay: Yes. They were one of those concerned about the labour--

Mr. Laughren: Was that not 123?

Mr. Sweeney: If nobody else seems to recall it, I thought I did, and I have made a little note in my book here. I certainly would not have any objection to involving more opportunities for research. That is not the basis of my bringing it up, but rather, that if there is going to be a limited pot, we all know from experience you have got to have enough money to do something worth while. If you say we are going to give 10 people \$1,000 each, none of them will be able to do very much. It is better to give the \$10,000 to one person and let him or her do something with it, regardless of whom you give it to.

Hon. Mr. Ramsay: But circumstances at the time have a great deal to do with that. Right at the moment in the Ministry of Labour, we are just having a devil of a time, because of the restraints in our budget, funding the organizations and projects we would like to fund and feel we should be funding.

The same circumstances will occur, I am sure, with the Workers' Compensation Board, and we have to leave them the flexibility to decide whether they have the funds and what the priorities may be with those funds.

Mr. Chairman: Shall subsection 24(3) carry? Carried.

We had better break for lunch right now before we get into any other discussion. We will come back at two o'clock and carry right on.

The committee recessed at 12:27 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

TUESDAY, SEPTEMBER 11, 1984

Afternoon sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)
Gillies, P. A. (Brantford PC)
Havrot, E. M. (Timiskaming PC)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Kennedy, R. D. (Mississauga South PC)
Laughren, F. (Nickel Belt NDP)
Lupusella, A. (Dovercourt NDP)
Mancini, R. (Essex South L)
Riddell, J. K. (Huron-Middlesex L)
Sweeney, J. (Kitchener-Wilmot L)
Yakabuski, P. J. (Renfrew South PC)

Substitutions:

Hennessy, M. (Fort William PC) for Mr. Kennedy
Kolyn, A. (Lakeshore PC) for Mr. Villeneuve
MacQuarrie, R. W. (Carleton East PC) for Mr. Yakabuski

Also taking part:

Gillies, P. A. (Brantford PC), Parliamentary Assistant to the
Minister of Labour

Clerk pro tem: Carrozza, F.

Staff: Revell, D., Legislative Counsel

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation
Board
Riddell, W. R., Board Solicitor and General Counsel, Workers'
Compensation Board
Wolfson, Dr. A. D., Assistant Deputy Minister, Program Analysis
and Implementation

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, September 11, 1984

The committee resumed at 2:14 p.m. in committee room 2.

WORKERS' COMPENSATION AMENDMENT ACT
(continued)

Resuming consideration of Bill 101, An Act to amend the Workers' Compensation Act.

Mr. Chairman: Order. We will resume our meeting. Mr. Lupusella.

Mr. Lupusella: Mr. Chairman, with the consent of the committee members, I would like to reinforce certain principles which at this time have been stood down and will be reviewed by the minister.

I would also like to emphasize the principle of how strongly we feel about changes in the Workers' Compensation Act. The minister asked me previously, in relation to the section which dealt with lump sum payments, how many times the board is in a situation where it does not give a lump sum payment to injured workers. I understand there are cases which have taken place where the board is not following what the act says.

To reinforce some things which have been said through the course of our criticism in relation to different clauses, I would like to remind the minister, when he reviews all the sections which have been stood down for further review, that some time the interpretation of particular clauses is left to the board and the board sets up policies afterwards.

Hon. Mr. Ramsay: Excuse me, I missed something there. I followed you up to about two sentences ago and then I lost you.

Mr. Lupusella: What I am trying to say is that you are going to review several clauses of Bill 101, and you should note how strongly we feel about certain changes which must take place within the framework of our own perspective even though you have disagreements with our political approach. But I would like to remind you, when you review all the sections that have been stood down, I hope you will also understand that the board is going to set up policies on top of all this.

To give you an idea, a concrete example, of how the policies set up by the board are sometimes stretched to the point that they are working against injured workers most of the time, I have a clear-cut case to demonstrate that. I do not want to go into details of the case, but I want to emphasize the principle of it.

I would like to touch upon the principle, for example, of commutation for injured workers receiving regular monthly pensions

from the board when, at a certain time, they ask for a commutation of their pension to pay off a mortgage on their house.

I had an appeal board hearing lately in which two mortgages of an injured worker were coming due around October. We requested half a commutation of two pensions which the injured worker was receiving. To let you know, for your own information, how the policies are stretched to the point that they are working against the injured worker, even though the principle of commutation is well spelled out within the framework of the present act, the case of partial commutation of the two pensions was lost for the following reasons.

2:20 p.m.

"The appeal board notes and accepts that evidence fails to support that Mr. X's house"--I do not want to mention the name--"is subject to immediate foreclosure or power of sale proceeding." In other words, if an injured worker were in a situation where he was in the process of losing his house as a result of foreclosure or power of a sale proceeding, or if there were a default in paying the instalment of the mortgage, at that time the board would consider the principle of accepting the commutation of the pension, which I think is unfair, but it is a policy currently implemented by the board in relation to the partial commutation of the pension.

"Two: In this specific case there is no evidence to suggest that the commutation request would assist in effective rehabilitation." During the board's hearing I brought to the attention of the board that the work this injured worker is currently performing is on a part-time basis. There are already signs that the company is hiring other people at lower rates and the injured worker is suffering from psychological problems regarding the apprehension or prospect of losing the job. This type of apprehensiveness by the injured worker might work by his thinking there is an immediate prospect of losing his job, which would mean he would not meet the requirement of payment of instalments of the mortgage.

The third reason to deny this request was, "The monthly pensions constitute a continuing and reliable source of income which should not be disrupted." To fight against this principle, we requested half commutation of the two pensions--partial commutations, not full commutation of the two pensions. That means that if the injured worker had got the partial commutation, there would be some continuing payment from the board.

Another point that came from the board's hearing to deny the partial commutation issue on behalf of this injured worker was, "There is no emergency situation with respect to the mortgages." I brought this specific case to the attention of this committee around July. The mortgages come due around October. The deliberation of the board's hearing came out today, which means to the injured worker that, even though he had an opportunity to get such commutation, he would not get it now. He did not even have time to go around and look for the mortgage.

"The appeal board concludes that Mr. X's commutation request does not meet the guiding principles or criteria for commutation of a pension, nor would the submission cause it to deviate from such criteria." I am using just the criteria used by the board to refuse the issue of a partial commutation. Even though the law clearly gives a mandate to the board, the policies sometimes stretch the imagination of the board to set up criteria and guidelines that work against the injured worker. It is grossly unfair. You understand why I get really upset when we deal with the specific clauses of Bill 101. It is because of the injustices faced by injured workers on a daily basis.

On section 24:

Mr. Chairman: We will go on where we left off this morning with subsection 24(4) of the bill at the top of page 19:

"(4) Section 71 of the said act is amended by adding thereto the following subsection:

"(4) The board of directors may delegate in writing any of the board's powers or duties, subject to such limitations, conditions and requirements as are set out in the delegation, to any director, officer or employee of the board who may act in the place and stead of the board of directors and when a delegate acts in the place and stead of the board of directors, it shall be presumed conclusively that the delegate acted in accordance with the delegation."

Mr. Sweeney: Can you say that in English?

Mr. Chairman: I was afraid you would want some interpretation.

Mr. Lupusella: I think there was a specific discussion in the past that the board of directors should have clear guidelines on what their powers and duties should be. They should be clearly spelled out in the act.

I do not want to be wrong, but I believe it was the subject of a big debate which took place among the members of this committee. I understand the board's powers were spelled out in the government white paper, but did not reach this bill, unless they are spelled out later, at the end of the bill. I would like to have some advice on that.

Mr. Cain: The powers of the board are outlined further on.

Mr. Lupusella: Are they spelled out in Bill 101? I think they are not.

Interjections.

Mr. Cain: They are on page 36 of the current act.

Mr. Lupusella: Of the present act.

Mr. Sweeney: What section?

Mr. Cain: Subsection 71(3).

Mr. Sweeney: The powers of the board, right.

Mr. Hess: It goes a little further than that section. If one looks particularly at section 75 of the old act, starting in my copy on page 39, you will see there are all sorts of things that the board has to decide.

For example, I am just dropping down to whether an industry falls within a certain branch of the schedule or not; the extent and degree of disability, of injury; permanence of disability; the amount of average earnings; the existence of dependency; the relationship of member of the family; whether there has been an accident, or whether an accident arose out of or in the scope of employment--all of those things are conferred by that section upon the board.

It is very apparent that the board cannot, acting as a board, sit and determine--I do not know what--300,000 or 400,000 cases a year and get into all of those types of inquiries that the statute says it should. The purpose therefore of subsection 4 which it is proposed be added to section 71 is to enable the board to delegate the duties and powers to be exercised in that regard--of investigation and determining the evidence and coming to a decision upon the facts as the evidence discloses. That is the fundamental purpose of subsection 71(4).

Mr. Sweeney: Surely this would have been done before, though. I guess there just was not any legislative authority for it.

Mr. Hess: It has been done, but it has never had any legislative authority to do it.

Mr. Sweeney: Okay. That makes sense.

Mr. Chairman: Shall that carry?

Section 24 agreed to.

On section 25:

Mr. Chairman: Section 25 states: "Subsection 72(1) of the said act is amended by striking out 'the approval of the Lieutenant Governor in Council' in the third line and inserting in lieu thereof 'such guidelines as may be established by the Management Board of Cabinet' and by striking out 'approved' in the 10th line and inserting in lieu thereof 'established by the chairman.'"

Mr. Sweeney: Instead of the cabinet making the decision, it is now the Management Board that makes the decision. What is the difference?

2:30 p.m.

Hon. Mr. Ramsay: Crown Employees Collective Bargaining Act?

Mr. Sweeney: Is that true for other boards and commissions?

Hon. Mr. Ramsay: The amendment provides that the chairman re-establish personnel policies, job classifications and so on, with the approval of Management Board of Cabinet and according to the Crown Employees Collective Bargaining Act. As currently worded, the act requires cabinet approval of board personnel policies.

Mr. Sweeney: Yes. That is what the existing subsection 72(1) says.

Hon. Mr. Ramsay: It is now going to Management Board.

Mr. Sweeney: But what I am asking is, is this switch from cabinet to Management Board a general trend with respect to various boards and commissions?

Hon. Mr. Ramsay: I do not know.

Mr. Sweeney: As legislation comes up, they are just making it uniform. Is that it?

Hon. Mr. Ramsay: Yes. There is an attempt to do that.

Mr. Chairman: Shall section 25 carry?

Mr. Sweeney: Excuse me. Just before we leave that, just for my own understanding, to what extent does Management Board, in itself, make such decisions? I am not sure I understand the relationship between a cabinet decision and a Management Board decision.

Hon. Mr. Ramsay: Management Board makes the decisions for the classifications and personnel policies for the government, as a whole, other than those made by cabinet. There are few made by cabinet. Most of them are made by Management Board.

Mr. Sweeney: There is no necessity for reference to cabinet then, the fact that it is referred to as Management Board of Cabinet?

Mr. Laughren: A further erosion of the Tory cabinet.

Mr. Sweeney: Okay, leave it, Mr. Chairman.

Section 25 agreed to.

On section 26:

Mr. Chairman: Subsection 26(1): "Subsection 74(1) of the said act, as re-enacted by the Statutes of Ontario, 1982, chapter 61, section 12, is amended by striking out 'an employee or

commissioner' in the third and fourth lines and inserting in lieu thereof 'a full-time member of the board of directors or an employee of the board'."

Mr. Sweeney: There are only two full-time members, are there not, the chairman and the vice-chairman? Is not everybody else part-time?

Hon. Mr. Ramsay: That has to do with the entitlement to the board's superannuation fund.

Mr. Sweeney: What I am looking for is the way in which it is worded here. At the present time, the words "chairman and vice-chairman" could be substituted, but is there some thought that there may be other people named as full-time directors? If not, why is it worded in this way?

Hon. Mr. Ramsay: As we understand it, it is simply to differentiate between part-time and full-time. Only two of them are full-time.

Mr. Laughren: You are not counting the chairman of the appeals tribunal, the ex officio.

Mr. Revell: I believe they are covered under superannuation at a later stage--

Mr. Sweeney: He would be under public service.

Mr. Revell: --when we deal with the appeals tribunal itself. I am just trying to find the provision. Oh, here it is, Mr. Laughren. It is on page 22 of the bill. It is subsection 86b(4).

Mr. Sweeney: Section 86b, subsection 4.

Mr. Revell: "...every full-time member of the appeals tribunal and every person appointed under subsection 3 to full-time employment shall be deemed to be an employee of the board," for the purposes of section 74, which deals with the superannuation provisions.

Mr. Laughren: I know we do not want to debate subsection 86b(4) now, but is that to make sure that nobody gets the impression that it is an independent appeals tribunal?

Mr. Chairman: Mr. Mancini also has a question.

Mr. Revell: I do not think that is a question I can answer.

Mr. Laughren: You are right. I should have asked it of Mr. Cain.

Mr. Mancini: Does this section make civil servants out of political appointees?

Mr. Chairman: Are you saying civil servants as opposed to political appointees?

Mr. Mancini: No. Does this section make civil servants out of political appointees?

Mr. Laughren: The other way around.

Hon. Mr. Ramsay: Are you looking for an answer?

Mr. Chairman: I do not know; I think he is.

Hon. Mr. Ramsay: You do not really want an answer to that, do you?

Mr. Mancini: Yes, I do.

Hon. Mr. Ramsay: The answer is that if--

Interjections.

Mr. Mancini: Political appointees can be changed and they are there at the pleasure of the government and, of course, civil servants have another status.

Hon. Mr. Ramsay: The sole purpose of this section is to permit the chairman and the vice-chairman to receive a retirement pension and to participate in the superannuation fund.

Mr. Mancini: You are telling the committee that the sole purpose of this section is so the chairman and the vice-chairman can receive a pension for their service--

Hon. Mr. Ramsay: Years of service.

Mr. Mancini: --years of service once they have left the board.

Interjections.

Mr. Mancini: Let us deal with the chairman and the vice-chairman first. Is there a formula that is used at the board now for calculating pensions?

Hon. Mr. Ramsay: Yes.

Mr. Mancini: And they would use the same formula?

Hon. Mr. Ramsay: That is right.

Mr. Mancini: Why would we want to give political appointees the same status as civil servants?

Hon. Mr. Ramsay: Why do we give elected representatives the same status as civil servants when it comes to pensions?

Mr. Mancini: We are governed under the Legislative Assembly Act. We are governed under a different act completely, as you know.

Hon. Mr. Ramsay: I am sorry, I am just not getting the point you are attempting to make. Are you suggesting that because these two gentlemen have been appointed by order in council they are not entitled to a pension?

Mr. Mancini: I am suggesting that when they are there by order in council and at pleasure they are there under a different status. Yes, that is exactly what I am suggesting.

Hon. Mr. Ramsay: I see. There are a fair number of people who would fall into this category, and you are suggesting they should not be entitled to pension credits while they are in those particular offices.

Mr. Mancini: I was always under the understanding--and correct me if I am wrong--that one of the reasons the salaries were made what they are today was to take into consideration the fact that they were not in a scheme.

Interjection.

Mr. Mancini: We have a list for you. Do not worry.

Just to give you a very notable example, the gentleman who was recently appointed as the chairman of the Commission on Election Contributions and Expenses. What is the gentleman's name?

Mr. Laughren: From Parry Sound?

Mr. Gillies: Mr. Aiken.

Mr. Mancini: Yes, Mr. Aiken. I believe he was given an extra \$5,000 a year in lieu of pension because he was a political appointee, the same as Mr. Alexander is. I just hesitate to support this, not because I do not believe they deserve whatever salary they receive but because I want the line to be very clear between civil servants and political appointees.

Then Mr. Hess brought to my attention the other matter of a full-time--what was the word you used about the employees?

Mr. Hess: I said I would change the amendment in section 26 of the bill to read "or an employee of the board" so this amendment would cover all the regular employees of the board as well and their pension rights.

Mr. Mancini: Yes, but the minister just told me that the regular employees are already covered, they are already in the plan, which is the way it should be. How does this expand it?

2:40 p.m.

Mr. Hess: It does not expand it. I am sorry, perhaps I should not have said anything. The amendment just sort of rearranged the language and, in rearranging it, reiterated again and perhaps unnecessarily, that it applied to employees of the board as well as to the full-time members of the board.

Mr. Mancini: It is my opinion that political appointees should not be treated the same as civil servants. They have a completely different status and they are there for completely different reasons. They did not go through the regular hiring procedure that a normal civil servant would have to go through, and all of these other things.

If you want to put these people on pensions, go ahead, but you can do it--

Hon. Mr. Ramsay: With respect, you are talking about a gentleman who is in this room right now, who is very highly valued, highly experienced, one of the most experienced persons in the North American continent and one of the most respected persons in respect to workers' compensation. He has been for a number of years--

Interjections.

Hon. Mr. Ramsay: I am trying to be serious. Would you expect this gentleman to work the number of years he has and the number of faithful years he has without the entitlements that you and I take for granted?

Mr. Mancini: I think you are confusing everything possible. First of all, you bring in the gentleman's qualifications and how dedicated the person is. That is not what we are talking about.

Hon. Mr. Ramsay: How about length of service?

Mr. Mancini: Second, you try to confuse the Legislative Assembly Act, which was established by your government, with an act that is governing employees of a crown corporation.

I believe the division between political appointments of this nature and the line that separates these political appointments and regular crown employees should be the way it is now.

How did you compensate these people in the past? Is it just in these last few months that somebody decided we have been doing wrong here and we have to give these people pensions too? This has been going on for some time. I cannot see why now, all of a sudden, we have to jump and change this.

Mr. Revell: Mr. Chairman, I think there is an impression that this is creating a new right under subsection 26(1).

The prime purpose of subsection 76(1) is to strike out the word "commissioner," which will no longer be used in the act, and replace it with a reference to full-time directors. As Mr. Hess has pointed out, there will be two full-time directors.

At the present time, the chairman and vice-chairman, who are commissioners--I do not know how the Workers' Compensation Board superannuation fund works, but I assume there are contributions made into the fund and whatever vesting requirements are there at the normal vesting age the pension vests (inaudible).

The section is not extending anything; it is merely changing the terminology to reflect the fact that the commissioner will now be a director.

Mr. Chairman: That, of course, is what we discussed this morning and on several occasions earlier.

Mr. Mancini: Are you saying the act does not extend pension rights to the chairman and vice-chairman?

Mr. Revell: Subject to correction by the minister's officials, at the time I was drafting the legislation I was under the impression that the full-time commissioners are at the present time covered by the superannuation fund. In fact, that is the very language of section 74(1) in the fourth line. Therefore, it was necessary to change "commissioner" to "director," but I--

Mr. Mancini: I just want to make sure I understand this correctly because, if what you have told me is correct, maybe the minister and I do not fully understand what is going on at the compensation board. I understood from the minister's explanation that the chairman and the vice-chairman are not now in a pension plan.

Hon. Mr. Ramsay: No, I am sorry. If I gave that impression, I owe you an apology. I am fully aware that they have been getting pensions and that they will continue to get pensions under this legislation. Before, we had X number of full-time commissioners and they were getting benefits. Now the act is changing and the corporate board will have two full-time directors or commissioners, if you want to call them that. The remainder will be part-time. The part-time ones will not be involved in the superannuation fund, but the two full-time ones will remain in the fund.

That has been my understanding from the beginning. If I misled you, then I was out of line. I did not intend to do that.

Mr. Gillies: If you read the existing act, subsection 74(2), "Subject to the approval of the Lieutenant-Governor in Council, the board may make regulations," lays out the four conditions and terms under which these people can receive pensions. I assume it has been the practice for some time.

Mr. Chairman: Shall subsection 26(1) carry? Carried.

Subsection 26(2): "Clause 74(2)(a) of the said act is amended by striking out 'commissioners' in the second line and inserting in lieu thereof 'full-time members of the board of directors.'"

Shall subsection 26(2) carry? Carried.

Mr. Chairman: Subsection 26(3): "Subsection 74(6) of the said act is amended by striking out 'commissioner' in the first line and inserting in lieu thereof 'full-time members of the board of directors.'"

Shall subsection 26(3) carry? Carried.

Section 26 agreed to.

On section 27:

Mr. Chairman: Subsection 27(1): "Subsection 75(1) of the said act is amended by adding at the commencement thereof 'Except as provided by this act.'"

Mr. Sweeney: We put this at the beginning, prior to the words "the board"?

Mr. Chairman: That is right.

Mr. Revell: If I may explain, at the present time the board nominally both makes the original decision on the issue and hears the appeals. With the new scheme, the appeals tribunal, being independent of the board, will have in cases a jurisdiction on top of the board's jurisdiction so that it is not quite an exclusive jurisdiction any more.

Perhaps Mr. Hess might make some elaboration on that.

Mr. Hess: I think you have covered it, Mr. Revell. This is to take care of the jurisdiction conferred by Bill 101 upon the appeals tribunal to review decisions of the board so the board would no longer have exclusive or the only jurisdiction in the matter.

Mr. Sweeney: Let me just stretch my thinking a bit. Worded in that way, does it preclude the board from exercising a veto power over the appeals tribunal?

Mr. Hess: No, I do not think so.

Mr. Sweeney: All it really does is say the board is now not the only one with exclusive jurisdiction.

Mr. Hess: Yes, that is the way I read it.

Mr. Sweeney: That means then that under certain circumstances someone else must have exclusive jurisdiction. That is why I am asking. Does it mean what I think it means?

Mr. Hess: I do not quite follow that last statement of yours.

Mr. Sweeney: All right. The first line says, "The board has exclusive jurisdiction." Let us just go that far. Now we are going to precede that with, "Except as provided in the act," and we now understand that those words mean "except as provided in the act to the appeals tribunal." In other words, the only provision in the act is to the appeals tribunal.

Mr. Revell: To the best of my knowledge, yes.

Mr. Sweeney: All right. Let us assume, just for the sake of discussion, that is what it means. Basically, we are saying that both the appeals tribunal and the board have exclusive jurisdiction.

2:50 p.m.

Mr. Revell: There are certain areas where there is an exclusive and final jurisdiction conferred on the appeals tribunal. I think you will find that set out on page 23 of the bill.

Mr. Sweeney: That is what I was reaching for. This does confirm the fact that the appeals tribunal does have the final say and therefore exclusive jurisdiction in some areas. It cannot be overridden by the board. It would be proper to interpret the section we are now dealing with to mean that.

Mr. Revell: That would be my interpretation, yes.

Mr. Chairman: Shall this section carry?

Mr. Laughren: I am a little confused. Are we just voting on--

Mr. Chairman: Subsection 27(1) of the bill.

Mr. Laughren: Subsection 75(1) of the act.

Mr. Chairman: "Subsection 75(1) of the said act is amended by adding at the commencement"--

Mr. Laughren: That has nothing to do with referral to the Ombudsman?

Mr. Chairman: I do not think so. Is that carried? Carried.

"(2) Subsection 75(2) of the said act is amended by adding thereto the following clauses:

"(1) the net average earnings of a worker;

"(m) whether a person is a spouse or child."

Mr. Laughren: Is that in the case of a child bride?

Mr. Chairman: It could well be. Is that carried? Carried.

Mr. Sweeney: Just a minute. Do not be so fast.

Mr. Chairman: I am just trying to be helpful.

Mr. Sweeney: Yes. Okay.

Mr. Chairman: Is that all right? Shall that carry? Carried.

"(3) Section 75 of the said act is amended by adding thereto the following subsections:

"(3) A worker who has made a claim for compensation or to whom compensation is payable under this act shall, if requested by the board, submit to a medical examination by a medical practitioner named by the board."

Mr. Laughren: Mr. Chairman, rather than having the wording that way, would it not be appropriate to say, "A worker who has made a claim for compensation or to whom compensation is payable under this act shall, if requested by the board, submit to a medical examination by an appropriately qualified medical practitioner"?

The reason I say that is that we have run into some problems--I cannot speak for other members--about people with one area of expertise ruling on disabilities that have nothing to do with their area of expertise. That really is a problem. There are some rather bizarre examples, as a matter of fact.

Rather than making it so arbitrary that the board could send anyone anywhere--you have already said "requested by the board"; so "named by the board" does not need to be in there--"appropriately qualified" takes away those almost silly kind of references that are made from time to time from a doctor within the board who is not properly qualified for a particular area.

I do not want to name names, but if pushed I could, of those who make decisions on areas outside their area of expertise.

Mr. Lupusella: There is a problem.

Mr. Laughren: There is a problem, yes.

Mr. Sweeney: Some would even say medical competence.

Mr. Laughren: I was not thinking of medical competence as much as ruling in areas where they do not have a specialty. I do not think it would alter the intent of the section.

Mr. Sweeney: Is this a direct reference to the new medical assessor?

Mr. Cain: The medical assessor is the appeals tribunal. That is the board's reference.

Mr. Sweeney: When it is used in this way, the board does not include the appeals tribunal?

Mr. Cain: That is correct. Quite right.

Mr. Sweeney: That terminology does not include it. Under what circumstances would this most likely be used, since it is not to be used at the appeals stage?

Mr. Cain: Currently, there are two or three possibilities.

One may have a claim with a variety of circumstances--if we have two differing medical opinions on file, or it is felt by the board that the individual should be seen by a specialist for some reason. This section gives the board the right to direct that the injured worker go to a doctor for examination. Or it could be to ask the worker to come in to the Workers' Compensation Board for examination by a board doctor.

Mr. Sweeney: A sort of review?

Mr. Cain: That is right.

Mr. Sweeney: Are we talking basically about decisions made prior to the appeal stage?

Mr. Cain: Absolutely.

Mr. Lupusella: Is this a new clause or an old clause?

Mr. Cain: If you look at sections 21 and 22 of the current act, they give the board the right, but they also give the employer the right. Now the employer's right has disappeared.

Mr. Lupusella: I do not see anything wrong with the suggestion that has been made by my colleague. It is a big problem. Perhaps the board will provide this committee with a list of specialists and doctors currently employed by the board and how the opinion of the injured worker is expressed by these doctors. I think the concerns raised by my colleague are very valid.

Hon. Mr. Ramsay: I would like to leave it as it is. I am concerned about the conflicts that would arise as to the definition of "appropriately qualified." There is a process later on for an independent medical assessor; so we are not taking those rights away.

Mr. Laughren: You are going to have us resorting to making amendments on the proper placing of commas, if you are not careful, before we are through this committee hearing.

Mr. Chairman: Is that a formal amendment of yours, Mr. Laughren?

Mr. Laughren: Yes.

Mr. Sweeney: Before members of the committee vote on it, Mr. Chairman, I would just draw their attention to the proposed subsection 75(4) of the act, which points out that if a worker refuses to be examined, his compensation can be suspended.

It is entirely possible that a reason for refusal might be a lack of confidence in the doctor who is doing the examination, as opposed to just a refusal to be examined, period. In other words, there is a penalty for it. I am just drawing your attention to that.

Mr. Chairman: Let us just get the wording down here, so we can amend the appropriate item.

Mr. Gillies: While that is being done, the point Mr. Sweeney just raised is rather bothersome to me. What would the actual practice be? Surely, if an injured worker refused to be examined by a certain physician, would not the board provide another acceptable physician? Or would that worker just be left in limbo until he or she agreed to submit to the original examination?

Mr. Cain: In most cases, one would give the injured worker the opportunity to go to another specialist. However, I am quite prepared to accept that there may be the odd case where that is not so. You may want the individual to go to a particular specialist because of his eminence in the field. I could foresee that as a situation. But in general, if an employee says, "I do not wish to go to that particular specialist," there is always another one to whom one could send the individual.

Mr. Gillies: The possible suspension of compensation then is just until such time as the injured worker submits to an examination, not necessarily the original one the board requested.

Mr. Cain: That is true.

3 p.m.

Mr. J. M. Johnson: Would you just clarify that? I am not sure, because that is not what it says.

Mr. Sweeney: It talks about a worker contravening subsection 3, and subsection 3 says, "a medical practitioner named by the board." If Dr. X is named by the board and the worker contravenes that, until such time as the board names somebody else--

Mr. Gillies: Let us have that clarified. I am assuming from what Mr. Cain just said that if the board requested the worker to appear before Dr. A and the injured worker refused to appear before Dr. A, and eventually it was worked out that Dr. B would be acceptable, on appearing before Dr. B he has fulfilled the obligation and would be entitled to his compensation.

Mr. Cain: The situation would be that if the board changed and agreed to another specialist, the board would have to accept that there was reasonable cause or excuse because the board accepted the worker's contention and gave him another specialist to see. Therefore, we would have to continue paying benefits.

Mr. Sweeney: Is that common, Mr. Cain? I have not run into many cases myself, but is it that common where a worker would use as a reasonable cause, or whatever terminology is currently in the act, the fact that a particular doctor--not so much likely in his view, but maybe in the view of his own family doctor--is not really qualified in that area?

I have had a few situations where a doctor in my community was rather upset by somebody being named by the board to do another examination. It could very well happen--and I can only remember one specific example--where the local community doctor indicated to the worker that he lacked the medical competence of this other person.

Mr. Cain: To my knowledge it happens rarely, because in most instances when we wish an individual to go to a specialist the practice is to write the attending doctor, the family doctor, and ask him to send the individual to a specialist. As I said, there are occasions when the board itself wishes someone to go to a particular specialist, but it is quite rare that the person refuses to go to that specialist. I cannot remember the last time.

Mr. Chairman: Do we have an amendment to subsection 3?

Mr. Revell: Yes. I have consulted with Mr. Laughren and this is the amendment I have written out for him.

Mr. Chairman: Mr. Laughren moves that subsection 75(3) of the act, as set out in subsection 27 of the bill, be amended by striking out "a medical practitioner named by the board" and inserting in lieu thereof "an appropriately qualified medical practitioner named by the board."

Mr. Chairman: You have all heard the amendment. Those in favour? Opposed?

It is tied. My goodness.

Mr. Laughren: You have an open mind, Mr. Chairman.

Mr. Chairman: Yes, I do have an open mind. I have given this every consideration and I am voting against the amendment, casting my ballot in that direction.

Motion negatived.

Mr. Chairman: Shall subsection 3, as written, carry?
Carried.

"(4) If a worker contravenes subsection 3 or in any way obstructs an examination without reasonable cause or excuse, the worker's right to compensation or to a decision by the board is suspended until the examination has taken place."

Mr. Mancini moves that subsection 4 be amended by striking out the word "is" in the last sentence and inserting in lieu thereof "may be."

Mr. Mancini: In that way we have some latitude, and that will conform with subsection 86h(7) on page 25, where it states, "If a worker is required by the appeals tribunal to submit to an examination by one or more medical practitioners who provide assistance to the appeals tribunal under this section and the worker does not submit to the examination or in any way obstructs the examination, the worker's right to compensation or to a final decision by the appeals tribunal may be suspended by the appeals tribunal."

Hon. Mr. Ramsay: Mr. Chairman, could we stand this one down while we get some legal advice on that?

Mr. Mancini: Before we move to stand it down, I think there is a basic principle involved here. Either we are going to

make it very firm in the legislation that the worker's rights here are absolutely suspended or we are going to give some leeway to the people who have the responsibility for looking after this matter.

I, for one, would prefer to give some leeway. If we are going to leave the word "is" in subsection 4, then we are just putting all kinds of constraints on a situation which might need some latitude. If we take the time to stand it down, I am not sure how that is going to change anything.

Hon. Mr. Ramsay: While Mr. Mancini has been expressing his point of view, that legal consultation I was asking for has taken place.

Mr. Mancini: I have done everyone a service.

Hon. Mr. Ramsay: That is right. We are prepared to go along with an amendment of that nature.

Interjection.

Mr. Mancini: Minister, your benevolence--

Mr. Chairman: Quit while you are ahead.

Mr. Laughren: I think we had better adjourn.

Mr. Revell: I have not had a chance to consult with Mr. Hess, who has also been involved in other consultations on this matter, but here is the wording I would suggest.

Mr. Mancini: The last time you gave me something, it got all 'screwed up.

Mr. Chairman: Mr. Mancini moves that subsection 75(4) of the act, as set out in subsection 27(3) of the bill, be amended by striking out "is suspended" in the last line and inserting in lieu thereof "may be suspended by the board."

It will now read: "(4) If a worker contravenes subsection (3) or in any way obstructs an examination without reasonable cause or excuse, the worker's right to compensation or to a decision by the board may be suspended by the board until the examination has taken place."

Mr. Mancini: Mr. Revell has been much more helpful this time.

Mr. Chairman: Shall the amendment carry?

Motion agreed to.

Mr. Lupusella: Could I move a further amendment, "suspended until a royal commission of inquiry has taken place"?

Mr. Chairman: Yes, you could suggest that; however, I think I will ask if subsection 4 as amended shall carry. Carried.

Section 27, as amended, agreed to.

Mr. Sweeney: Except that I believe we stood down subsection 3.

Mr. Chairman: No.

Mr. Laughren: Unfortunately, we did not.

Mr. Sweeney: Did we not?

Mr. Chairman: No. We carried subsection 3.

Mr. Sweeney: I thought we did.

Mr. Chairman: Nice try, John.

Mr. Laughren: The scoundrels voted down the amendment.

3:10 p.m.

On section 28:

Mr. Chairman: Mr. Gillies, would your care to read through section 28. My voice is going to be giving up on me. That helps keep you awake too.

Mr. Gillies: It is a pleasure; no problem; I am absolutely engrossed in it.

"28. Sections 77 and 78 of the said act are repealed and the following substituted therefor:

"77. (1) Subject to subsection 2, where there is an issue in dispute, upon request, the board shall give a worker, or if deceased, the persons entitled to benefits under section 36, full access to and copies of the board's file and records respecting the claim and the board shall provide like access and copies to a representative of the worker upon presentation of a written authorization for that purpose signed by the worker, or if deceased, signed by a person entitled to benefits under section 36."

Mr. Sweeney: Usually when we replace something, there is some continuity about what we are replacing. These are two entirely different issues. Why is it in here? Section 77 in the existing act talks about quorums and panels and assignments, etc.; now we are talking about files and records.

Dr. Wolfson: We do, of course, have a different section to address the quorum issue. I think it was just in line with the legislative drafting to provide the sequence. Maybe Mr. Hess can comment in the absence of legislative counsel.

Mr. Hess: We are running now almost into the creation of the appeals tribunal. We have been dealing with the board's powers and what it can determine and so on, and it was thought

appropriate at this point. One can always take another view of the matter.

Mr. Sweeney: I, quite frankly, do not care that much. I am just wondering. As I say, it seems to be a different procedure than what we have been doing all the way along. There has been some relationship between what we were replacing.

Mr. Hess: Yes, that is true, but bear in mind that the existing sections 77 and 78 dealt with the old appeals to the commissioners, which are now being abolished.

Mr. Sweeney: They are being handled by the appeals tribunal.

Mr. Hess: That is going out, and we have a new appeals tribunal with its own powers, etc., and we wanted to give rights to get access to information, records, files and the things at the board. We have dealt with the powers of the board with respect to making determinations on claims for compensation or benefits. We thought before we put it somewhere else, it seems when this act is reprinted it would follow along fairly well, and we thought this would be an appropriate place for it. We are now dealing with the case where there is a claim and there is a dispute before the board about a claim. The worker or dependants are entitled to the information that the section says they are entitled to.

Mr. Sweeney: Fine.

Mr. Lupusella: As an editorial comment, I know it is not necessary, but I would like to pinpoint how generous it is for the board to provide paper to the injured workers with the clear mandate that the board must provide access and copies to a representative. When it has to do with rights and money, then the word "shall" is changed to "may." But in this particular instance, I think the board is very generous in giving out paper, nothing else.

Mr. Laughren: We are on 77(1)?

Mr. Chairman: Yes.

Mr. Laughren: We are going to need some legal minds to work here. If the person is deceased and someone claims benefits whom the board does not think should claim benefits, but that person obviously thinks he should, what would be the interpretation of the section that says in the third line, "the persons entitled to benefits under section 36"? The board says: "You may think you are entitled to benefits. We think you are not. Therefore, you do not have access to the information." What would happen there?

Mr. Sweeney: That is a good question.

Mr. Hess: I guess there is a preliminary issue then, is there not?

Mr. Laughren: If you appealed it, you would not have access to the information you need to win the appeal.

Mr. Hess: That is a problem. "The persons claiming to be entitled to benefits" would certainly cover the point you have raised, Mr. Laughren. Persons claiming to be entitled to benefits?

Mr. Laughren: Yes, but the board says, "No, you are not."

Mr. Hess: No, but it is just the claim. Then we are talking about the persons claiming, if they have a claim.

Mr. Sweeney: So you are going to add the word "claiming" between "persons" and "entitle," is that what you are recommending?

Mr. Hess: That would be better, yes: "the persons claiming to be entitled."

Mr. Laughren: I see. That would be better, yes.

Mr. Sweeney: That would help.

Mr. Hess: Let us face it, you are not going to open these files to anybody who walks in off the street, obviously.

Mr. Laughren: No, but that might very well be exactly what happens. Some person walks in off the street and says, "I am the long-lost son."

Mr. Hess: "I am the son of so-and-so. Let me see his files."

Mr. Laughren: "I am the long-lost son," or the illegitimate son or whatever, "therefore, I am entitled to benefits."

Mr. Hess: I guess they would just have to make sure of his identity.

Mr. Laughren: Make sure of what?

Mr. Hess: To identify him, I suppose.

Mr. Laughren: Sure, but that would be the problem. I am a little confused here. I think Mr. Hess is saying he agrees with me, which is remarkable in itself.

Mr. Hess: Not always.

Mr. Laughren: No, not always. In this case I think he is saying it might be more appropriately worded, "the persons claiming entitlement to benefits." I think that is what he is saying.

Mr. Hess: Yes.

Mr. Laughren: Okay. That is acceptable to me, anyway.

Mr. Chairman: Are you not concerned, though, that somebody who is unauthorized could claim to be representing the claimant and say: "I would like to have access to Mr. Smith's records. I am his agent"? I just wonder if you are opening up the door.

Mr. Laughren: It could be rejected and turned down.

Mr. Riddell: Mr. Hess says the person would have to prove that. If he were claiming to be a representative he would have to show some kind of identification that he is.

Mr. Chairman: What about us as members? We could claim to be and in fact not have been authorized. The board is not going to reject us as members, because we have been through this so often.

Mr. Riddell: I am not so sure that we as members should be entitled to open up or look into somebody's private file, though, should we?

Mr. Chairman: No, I do not think we should be, but what if we wanted to for some reason?

Mr. Gillies: In my constituency office we have a little form, and if I am going to request the file for somebody, the worker has to sign it. Is that not the way everybody does it?

Interjection: Yes.

Mr. Gillies: I think they gave us the basic format and we just typed up a little declaration, but the board did tell us it required something like that before it would give us the files.

Interjection: I understand that.

Mr. Chairman: What about going back to the word "may," as Dr. Wolfson suggested--"may be entitled to"--which would put some discretionary power back into the hands of the board?

Mr. Lupusella: When you do that you get into problems taking into consideration cases that eventually will never take place. I would not support such a change from "shall" to "may," because--

Dr. Wolfson: That was not my suggestion, Mr. Lupusella. I meant to amend the third line to read, "the persons who may be entitled to benefits under section 36," rather than "claiming to be entitled," which would take the discretion out of the board and potentially allow unauthorized persons access to records; and, on the other hand, open it up so you did not have to prove entitlement before you got access.

Mr. Lupusella: I can accept that.

3:20 p.m.

Mr. Sweeney: I am a little bit concerned about opening

it up to the extent that people who in fact are not entitled would get access to records. Quite frankly, that concerns me more than the difficulty we may have getting them for someone who is entitled.

It seems to me that getting access to records for someone who is entitled may take a little longer, may involve a little more work, but you are probably eventually going to get them; whereas leaving it too open means that somebody who is not entitled would be able to get at them. I think the correction, the cure could be more dangerous than the disease, especially when you have a survivor's situation where there are two or three different people claiming to be--

Mr. Lupusella: We are going to add on the fifth line, "respecting the claim and the board upon identification of the applicant shall provide like access and copies to a representative." In other words, the board must be sure of the identification of the person requesting full access. The board must provide access and copies to a representative after checking who that person is, on identification of the applicant.

Mr. Sweeney: I do not think that is the problem. It is not whether the applicant is who he or she says he or she is. It is not the identification factor. It is whether someone who may not be entitled gets access to the file as opposed to someone who is entitled.

Mr. Laughren: Why not put in "has a reasonable claim"?

Mr. Lupusella: I think the problem arises only in the case of a deceased person. Am I correct? Does section 36 refer to a deceased worker?

Dr. Wolfson: Yes.

Mr. Lupusella: Okay. That is the only problem that might arise. The person applying for benefits on behalf of the spouse can be somebody else coming off the street, claiming access to the board's records on deceased workers.

With the present system I think the board is already using great and stringent guidelines as to who is the representative by the signing of papers and so on. I really do not foresee problems.

Mr. J. M. Johnson: I am a little confused about much of this. I have studied the transcripts of the hearings and I thought I was fairly well informed on some of the aspects, but I find we are constantly running into problems by trying to cross every "t" and dot every "i" without really taking into consideration any of the concerns of the worker himself.

We are talking about an individual worker who is killed and what is going to happen to the payments. In any insurance agreement, surely the individual names someone who is going to look after his interest. There is the case of a worker with a couple of small children and the spouse has died, so he is responsible for taking care of those children. Is there nowhere in

this act where the worker himself or herself has the opportunity to name someone to look after his or her interests?

Mr. Sweeney: No more than someone who dies without a will.

Mr. J. M. Johnson: Why do we always assume--most workers are quite intelligent and would like to pick someone and name him as an individual to take some of the responsibilities away from the board.

Interjection: But they do not do that.

Mr. Sweeney: Assuming they have done that, there is no problem.

Mr. J. M. Johnson: All right.

Mr. Sweeney: Let us go to the other assumption which is just as common; I should not say that.

Mr. J. M. Johnson: In the event he has named someone, is he authorized to proceed?

Mr. Sweeney: I do not think there would be any problem. That is not really likely to be a problem.

Mr. Gillies: If you have an executor who is going to take care of whatever private insurance or other arrangements you had, presumably that person would also take a look at the Workers' Compensation Board claim, keeping in mind--because we have been through this once before--that this act might override some provisions in that person's will. In other words, the act may say the money has to be left to person X or Y, even though the person's will might say it should go to person A or B. Is that correct?

Mr. Sweeney: There could be two surviving spouses. There could be a spouse through marriage and a spouse through a common law arrangement. There could be several combinations.

Mr. Gillies: I could leave my money or my assets to my favourite nephew or niece, but this act will say who is in line for any Workers' Compensation Board money ahead of those persons I name. Right?

Dr. Wolfson: Perhaps Mr. Cain can comment on this from his experience, but it occurs to me that we may be making more of this than is here.

I think the problem that was raised was the question of whether it was necessary for potential beneficiaries under the act to have access to records in order to establish their entitlement. What establishes entitlement under the act is the status of the family member and his or her dependency relationship. That is hardly information likely to be found in the board's records, as opposed to records that are available to the claimant.

I would think it is a rare, almost impossible case where the entitlement to benefits under section 36 could in any sense be informed by access to the board's records. If that is false, perhaps Mr. Cain or members of the committee could give examples of how the restriction in the third line of this section would be binding.

Mr. Sweeney: The entitlement could also mean whether or not anyone is entitled to anything, as opposed to just a relationship.

Dr. Wolfson: This is deceased workers.

Mr. Sweeney: Still, maybe there is no proof that the death occurred because of the work experience, so that the record would then be part of the entitlement proof.

Mr. Cain: That is correct. There is the possibility that the claim was rejected because there is no proof of accident. Someone who perhaps could be considered to have entitlement--and that individual is cited in section 36 as perhaps a potential dependant--would have the right to the claim, the access to records, so that he or she could pursue an appeal. This is simply pointing out that an individual--

Mr. Sweeney: So they could prove that anyone has any entitlement. There are two different ways of being entitled. One is that you are a legal claimant. The other is that you have claim to something.

Dr. Wolfson: To cover up that possibility, then, the insertion of such words as "may be entitled" would provide access by potential claimants who have legitimate right of access to the information.

Mr. Laughren: When you refuse us any substantial amendments, you force us into looking at every nook and cranny for a possible amendment we can make, just so we can justify our existence in the committee.

Mr. Chairman: It has been justified to this point. We really appreciate the input that we have had from all members of the committee.

Mr. Laughren: Some of the most knowledgeable in all of North America.

Mr. Chairman: That is right.

Mr. Sweeney: Where are we now?

Mr. Chairman: Do you wish to draw up some amendment for us? Do you wish to stand this one down, or would you rather insert the words "may be"?

Mr. Laughren: I think he is justifying his existence, too.

Mr. Revell: All lawyers have to.

Mr. Chairman: He has saved our hides a few times.

Mr. Sweeney: I do not know about that. When we get finished with this act, there will be an appeal.

Mr. Chairman: That is right.

Interjection: If Doug were in his grave, he would turn over.

Mr. Chairman: Let us read subsection 77(2) while we are getting subsection 77(1) tidied up. Mr. Gillies?

Mr. Sweeney: See if you can do a better job with this one.

Mr. Gillies: I am sorry about all the loose ends.

Subsection 77(2): "Where the file or a record respecting the claim, in the opinion of the board, contains medical or other information that would be harmful to the worker, if given to the worker, the board shall provide copies of such medical information to the worker's treating physician instead of the worker or the worker's representative and advise the worker or the representative that it has done so."

3:30 p.m.

Mr. Laughren: Could I have an explanation on that? I am okay up to the point where you say "to the worker's treating physician instead of the worker or the worker's representative" and you would advise the worker. When would you advise the representative?

Mr. Cain: As it states, instead of the worker, the worker's representative, "and advise the worker or the representative that it has done so." As we would today normally provide the information to the worker or his representative, we will provide that information to the worker or his representative.

Mr. Laughren: I see. Okay.

Mr. Chairman: Shall subsection 77(2) carry? Carried.

I think we will go back to subsection 77(1) now and tie that one up.

Mr. Riddell: I do not know who is making this amendment, but I will read it out.

Mr. Laughren: It is a collective amendment.

Mr. Riddell: I will move that amendment, Mr. Chairman.

I move that subsection 77(1) of the act, as set out in section 28 of the bill, be amended by inserting "who may be" after "persons" in the third line and after "person" in the eighth line.

Mr. Chairman: Thank you, Mr. Riddell. The finely honed legal mind of Mr. Riddell has come through.

Motion agreed to.

Mr. Gillies: Subsection 77(3): "Where there is an issue in dispute, upon request, the board shall grant the employer access to copies of only those records of the board that the board considers to be relevant to the issue or issues in dispute and the board shall provide like access and copies to a representative of the employer upon presentation of written authorization for that purpose signed by the employer."

Mr. Laughren: I think we should have in there an amendment to say, "with the approval of the injured worker."

Mr. Sweeney: Excuse me, before we pass on that, somewhere in here there is a reference to the fact that the injured worker has--or was that in our discussions?--a right to be advised, and if there is anything in it he does not think they should get, he has the right of appeal, or something. Where is that?

Dr. Wolfson: Subsection (5).

Mr. Sweeney: Okay. Before we pass subsection (3), could we at least read subsection (5) so we can see the relationship between them? I think that is important.

Mr. Chairman: Okay. Fair enough.

Mr. Sweeney: I knew there was a limitation that gave the employee some rights there. I would like to have it read so I know the connection.

Mr. Chairman: Would you read subsection 77(5)?

Mr. Gillies: "Before granting access to the employer to medical reports and opinions under subsection (3), the board shall notify the worker or claimant for compensation of the medical reports or opinions it considers relevant and permit written objections to be made within such time as may be specified in the notice before granting access to the employer and, after considering the objections, the board may refuse access to the reports and opinions or may permit access thereto with or without conditions."

Mr. Sweeney: That is the one I was looking for. So subsection (5) limits subsection (3).

Mr. Laughren: It is a limited limit. The worker can say: "Wait a minute. That is part of my medical information I deem not to be relevant because it deals with something that has nothing at all to do with the physical injury." The board could still overrule even though it is that person's body that is being discussed.

Hon. Mr. Ramsay: In subsection (6), Mr. Laughren, he can appeal.

Mr. Laughren: I cannot keep up with this movie.

Mr. Sweeney: If you do not have something like that, though, Floyd, the danger is that the worker could literally refuse to give access to any information on the grounds that he simply did not want them to have it. That may be valid. All I am saying is that if you do not have some kind of qualification in subsection (5), then subsection (3) makes no sense and you might as well eliminate subsection (3).

Mr. Laughren: So moved.

Mr. Sweeney: The worker does have a right in subsection (6) to appeal. I think he would have the right to make a good case if there was certain information that really had nothing to do with the issue.

Mr. Chairman: Is subsection (3) understood? Are we okay on that?

Mr. Lupusella: We had a great debate about confidential medical reports that should not be released to other people, so I would move an amendment that the authorization for the purpose should be signed by the patient concerned. It must be the injured worker's consent in a case and not the private employer's.

Mr. Chairman: Can you give us an amendment or a suggested wording of that, Mr. Revell?

Mr. Revell: I would have to request that Mr. Lupusella outline it. Is it subsection (5) you are talking about?

Mr. Lupusella: Yes, it is subsection (5).

Mr. Chairman: Okay. We are doing subsection (3) right now.

Mr. Lupusella: Yes, but the employer's access to copies includes medical reports. I think my amendment should be incorporated into subsection (3) as well. Otherwise, what kind of access will the employer have if he does not receive medical reports under the access to copies of the file provision. Am I wrong?

Mr. Laughren: I worry about something such as psychological impairment or psychiatric problems. That is what I worry about in this subsection.

Mr. Lupusella: Maybe I need clarification of subsection (3) and what the subsection does. Why do we need subsection (3) if we have subsection (5), which takes into consideration the ramification of full access? Is it just to give authority to the employer to have full access to the file and nothing else? What does it do?

Mr. Revell: It is my understanding that subsection (3) establishes the right of the employer to review the records of the board with respect to a claim. Subsection (5) then is a qualification that deals with medical reports and opinions. The board cannot release the part of the file that deals with medical opinions and reports without first notifying the worker, the person or any other claimant that there has been a request for access. At that point, the worker or other claimant can object and the board would be requested to hold a hearing on the objection.

Finally, regardless of the decision the board makes with respect to the giving or withholding of medical information, there is an appeal to the appeals tribunal by the parties affected.

Mr. Laughren: As a legal person who would by definition be interested, I would think, in civil liberties, is it not a concern? Think of the precautions we take, for example, on income tax records of people; they are so personal, yet this is more critical to the person than income tax records. Second, I do not think there is anything in here that says the employer must not reveal or pass on any such information to anyone else.

3:40 p.m.

I can see a situation where a creditor would phone up an employer or a credit rating bureau for a credit rating or something, and I worry about those things when it comes to medical records.

I know the argument that is being made, the one the member for Kitchener-Wilmot (Mr. Sweeney) put quite well, that the worker could simply refuse to give you any information. I would rather err on that side than the other side.

Mr. Revell: I guess there are two different aspects, if you were addressing that to me, Mr. Laughren.

Mr. Laughren: Yes.

Mr. Revell: One is with the legal effect of a section such as this and then there are policy considerations. To use an analogy at law would be to look at a civil proceeding where you have a claim for damages resulting from physical injury. In such a case there is a requirement before proceeding to court that there will be what is called an examination for discovery. That examination for discovery can include, and it usually does in such cases, very full and wide medical examination. To that extent--

Mr. Laughren: That is in court, though, is it not?

Mr. Revell: That is a court proceeding.

Mr. Laughren: Right, that is a pretty heavy proceeding, as opposed to this, where there is a quasi-judicial body.

Mr. Revell: I am just saying there is a legal analogy. Really, I think you are still dealing with the same kinds of

issues, as to how a person can deal with an appeal, for example, where somebody feels the worker is overclaiming, unless you do have access to the records.

What this section does, though, is say that the worker is at least going to have the right to say, "Yes, there are things on the medical record that are legitimately open to everybody and there are things on that medical record that have nothing to do with the particular claim." I assume those are the kinds of things the board is going to have to decide.

I do not want to put words in the mouth of the ministry on that because I think I have covered off those issues which are legislative counsel type issues and those matters which are for the ministry staff to do.

Mr. Sweeney: May I raise a question that has just been raised? I was of the understanding that there is a confidentiality agreement on any information that goes from the board to such people as an employer. Is that true or not true?

Mr. Cain: I must say I have never read the declaration or whatever they sign, but I believe employers and employers' reps and workers and workers' reps also sign something that indicates the records being provided will be used only for purposes of workers' compensation and pursuing an appeal, yes.

Mr. Sweeney: That is the understanding I have had.

Mr. Laughren: I do not remember signing anything such as that.

Mr. Cain: I saw a form one day and I did not read it, but I believe that is what it said.

Mr. Sweeney: Could you check that for us?

Mr. Cain: Yes.

Mr. W. R. Riddell: Mr. Chairman, there is such a form that employers and their representatives are asked to sign. Personally, I have always been uncomfortable with it because there are no sanctions if the undertaking not to give the information is violated.

Mr. Laughren: That is not in the act though, is it?

Mr. W. R. Riddell: No, it is not in the act. There is no legislative authority and no other authority for that form. There is no sanction, as far as I am concerned, if it is violated.

Mr. Sweeney: Mr. Chairman, for the record, could the gentleman identify himself?

Mr. W. R. Riddell: My name is Riddell. I am general counsel for the Workers' Compensation Board.

Mr. Riddell: And a real good name at that.

Mr. Cain: I do not know quite how important it is, but the last few words of subsection (5) indicate that if the board rules and permits access to these medical records, it says "with or without conditions." Whether or not that expands on the whole point I am not sure, but I noticed those words added.

Mr. Lupusella: Mr. Chairman, in our dissenting report and through the course of our debate we took the stand that the employer really does not need access to the injured worker's file. First, the infrastructure of the board has been based on the principle that it is already looking to compensation per se for injured workers. I do not know on what basis employers are going to file appeals, besides the principle as to whether or not an accident did not take place on the employer's premises.

Through the course of my experience, really, I did not see so many appeals besides Mr. Cornish, now that he is taking the stand of appealing cases on medical grounds. Either the compensation for certain injured workers has been prolonged and they were not entitled to it or, in the majority of appeals which I saw in 12 years as a result of my personal experience, employers really appealed the cases because the accident did not take place in the course of the employment. Therefore, really they do not need any medical report whatsoever to substantiate an appeal which is lodged on that basis.

I will vote against subsection (3) as a whole because I do not think it is really needed.

Mr. Laughren: What the minister has to decide is whether or not he is on the side of civil liberties or the employers' council.

Mr. Chairman: We have the opinion of Mr. Lupusella, who would like to see this deleted. The way you delete it, of course, is by voting against it.

Shall section 28 of the bill, subsection 77(3) of the act, carry? Carried.

Section 28, subsection 77(4): We did not read that one off.

Mr. Gillies: "(4) Where the employer or the employer's representative is given access to and copies of records referred to in subsection (3), the worker or worker's representative shall be informed of the access to and copies of records so given."

Mr. Laughren: Maybe it would be better to change that to "the worker or worker's representative must agree before access is given."

Mr. Chairman: I hear some "no"s up here.

Mr. Laughren: Really?

Mr. Chairman: Just one.

Mr. Laughren: I did not hear one.

Mr. Sweeney: The only one that counts.

Mr. Chairman: The only one that counts, that is right.

Mr. Sweeney: May I propose another change here? Fully cognizant of what Mr. W. R. Riddell just told us, I would at least like to have it in the legislation "and that such records are confidential," something to that effect.

I realize there are no penalties implied in here and I am not sure how you put them in here, but I think we should have it at least on the record that it is understood that the employer or the employer's representative will keep such information confidential.

Mr. Chairman: How can we handle that?

Hon. Mr. Ramsay: I certainly have no objection to that if appropriate language could be worked out by counsel.

Mr. Sweeney: As near as I can see, "where the employer or employer's representative is given access to and copies of records referred to in subsection (3), such records will be kept in confidence."

Mr. Revell: I think this is one place where I would like to have certainly until tomorrow morning to come up with something. There are perhaps other pieces of legislation which have confidentiality provisions in them and I would like to have an opportunity. I will make a note.

3:50 p.m.

I presume that what you are looking for would be something that says that they are confidential. That does not, of course, prevent them from being used for purposes of any appeals.

Mr. Sweeney: It would seem to me that the only way they could be used would be at an appeal hearing; the employer's representative would be prohibited from transmitting that information to anyone else for any other reason, except for the appeal hearing itself.

Mr. Revell: Yes. Certainly, I do not think it would be barred. For example, if there is medical information on that file, and he requires an interpretation of that medical explanation, the lawyer of the employer or the employer's representative is probably going to require the assistance of a qualified medical practitioner to interpret the medical file. That strikes me as what would happen.

Mr. Sweeney: Could it not say something such as "the employer or employer's representative is prohibited from transmitting such information to any other person for any other reason except for the handling"--whatever it is--"of the appeal," to make it clear that it has to be restricted to that purpose and that one purpose only?

Mr. Revell: Perhaps the best way to proceed is to stand down subsection 77(4). Or you can approve subsection 77(4) and leave it open to Mr. Sweeney to have a subsection 77(7) tomorrow, which would qualify the use of the information. It is open as to how it is handled.

Mr. Chairman: Would you prefer that we just stand down subsection 77(4) in case you want to fit it in there, or do you want to take your time?

Mr. Revell: It does not matter to me one way or the other.

Mr. Sweeney: I do not think there is any disagreement the way subsection 77(4) stands now. We certainly want the worker or the worker's representative to be so informed. I do not think there is any question about that one.

Mr. Lupusella: I think counsel's position is best. I would like to have a definition about how the confidential material is going to be used.

At present, an employer will get medical information. He will bring the medical information to an independent specialist for a full review of all medical reports contained within the file, and he is going to express an independent medical opinion without seeing the injured worker. This practice is completely wrong, and we need a definition of how the confidential material should be used.

Mr. W.R. Riddell: I think you had better include it in a new subsection rather than to put it in subsection 4. I am not too sure it should be in subsection 3.

Mr. Chairman: In other words, it could be subject to subsections 3, 4 and 5.

Mr. W.R. Riddell: If we were not going to include a new subsection, I would suggest that the confidentiality aspect be included in subsection 4. I think it would be more appropriate in a new subsection 7.

Mr. Sweeney: All right. That is a valid point.

Mr. Chairman: We all agree that there should be a new subsection 7. In this case, we can carry subsection 77(4). Shall we carry subsection 77(4)? Carried.

We have read subsection 77(5).

Mr. Lupusella: I might change my mind if the new amendment takes into consideration the use of a confidential report.

Mr. Chairman: That is what we are instructing--

Mr. Lupusella: But I do not know yet; so how I can I vote for or against?

Mr. Chairman: Would you prefer to have subsection 77(5) stood down until you see what subsection 7 says?

Mr. Lupusella: I think that is the best way.

Mr. Chairman: Okay, if you so wish. We will stand that down.

Subsection 77(6): "A worker, employer or party of record may appeal a decision of the board made under this section within 14 days of the board's decision and no access to or copies of the board's records shall be provided until the expiry of the 14-day period or until the appeals tribunal gives its decision, whichever is later."

Mr. Laughren: I think there needs to be a change there, Mr. Chairman. I am not sure of the exact wording, but after "made under this section within 14 days," instead of "of the board's decision," should be inserted "after the receipt of the board's decision."

Mr. Lupusella: Also, if I may reinforce the principle that has been emphasized by Mr. Laughren, if we are including a worker to fall within such guidelines, we might be faced with a problem coming from ethnic people who do not know how to read letters and who will not take immediate action until they seek assistance from others. They might be faced with a situation where the expiry date will pass and the ethnic injured worker will not have an opportunity to launch an appeal on the decision of the board made under this section. I am particularly concerned about that.

Hon. Mr. Ramsay: I am sympathetic to what you say, Mr. Lupusella. I am just wondering practically how it could be done.

Mr. Lupusella: By extending the 14-day period.

Hon. Mr. Ramsay: How about 14 days from the mailing of the decision?

Mr. Lupusella: I think Floyd's suggestion was better.

Hon. Mr. Ramsay: I am sorry; I did not get Floyd's suggestion.

Mr. Sweeney: Receipt.

Hon. Mr. Ramsay: That is the point of what I am saying. How do we know it was received?

Mr. Laughren: Get a receipt from the postal service.

Interjection: Sure.

Mr. Lupusella: Then I would extend the period of time. Instead of 14, we might extend it to--

Mr. Sweeney: These guys are running it.

Hon. Mr. Ramsay: That is a low blow. That is the first salvo--

Mr. Laughren: The first of many.

Mr. Sweeney: Get used to it. We have been storing it up for 16 years.

Mr. Lupusella: It could be extended to three weeks.

Hon. Mr. Ramsay: All right. We will go for three weeks.

Mr. Lupusella: With the recommendation that the board will instruct--maybe I am asking too much.

Interjections.

Mr. Lupusella: If the letter were translated into the injured worker's language, it would be better.

Hon. Mr. Ramsay: A 21-day period rather than a 14-day period.

Interjections.

Mr. Sweeney: If for any reason at all the decision could be held up and the board's offices would be--

Hon. Mr. Ramsay: Yes, 21 days from the mailing.

Mr. Mancini: Mr. Lupusella's suggestion for an extended date was a very good one, instead of trying to--

Hon. Mr. Ramsay: That is what we are doing.

Mr. Mancini: That is what we are doing? Oh, I am sorry.

Hon. Mr. Ramsay: Pay attention here.

Mr. Mancini: I was taken off course by all these interjections about you guys running the post office and stuff--

Mr. Laughren: Hang in there, Remo.

Mr. Chairman: Order, please.

Hon. Mr. Ramsay: With respect, Mr. Chairman, I do not think we have to add the part about writing or communicating properly, because that is covered in subsection 29(2): "Every decision of the board and the reasons therefor shall be communicated promptly in writing to the parties." So 21 days should cover everything.

Mr. Laughren: Especially now.

Mr. Revell: I have drafted the amendment as follows: "I move that subsection 77(6) of the act as set out in section 28 of the bill be amended by striking out '14 days' and inserting in lieu thereof 'within 21 days of the mailing.'"

Mr. Mancini: I think we should have it as within 21 days of the board's decision.

Mr. Revell: Mr. Mancini, from a practical point of view, the mailing is probably more generous to all concerned than the date of the board's decision. I do not know about the Workers' Compensation Board, but it has been known that a decision can be made today by--

Mr. Mancini: A decision is not a decision until it is put down and sent out.

Interjection: Oh yes. Sure it is (inaudible) on the desk.

Mr. Mancini: All right. If you feel they will keep these things on their desks.

Interjection: Tories are well known for that.

Mr. Lupusella: Just for the record, I would like to remind the members that I received a board's hearing decision after one year.

Interjection: One what?

Mr. Lupusella: One year.

Mr. Chairman: It was the fault of the post office, was it not?

Mr. Lupusella: I am serious. I am not kidding, Mr. Chairman. It is true; I can provide evidence.

Mr. Chairman: Do you move the "21 days" amendment, Mr. Gillies?

Mr. Gillies: So moved.

Mr. Chairman: Those in favour of the "21 days" amendment? Carried.

Mr. Revell: We need one further small amendment in that section, and that is where it appears the second time. The expression "14 day" should be amended to read "21 day."

Mr. Chairman: Shall that amendment carry? Carried.

Shall subsection 77(6), as amended, carry? Carried.

Section 28, as amended, agreed to.

On section 29:

Mr. Gillies: Subsection 29(1) says: "Section 79 of the said act is amended by striking out 'appeals' in the second line."

Mr. Laughren: I have a question. In the act, section 79 reads, "The board shall determine its own practice and procedure in relation to applications, appeals and proceedings," etc. I understand that in terms of the new appeal tribunal. What is bothering me is the appeals adjudicator level, which is still within the jurisdiction of the board, right? More totally, with no pretence at independence, if you follow what I am saying. Right?

Mr. Cain: It is still within the board.

Mr. Laughren: Right. Therefore, I think the word "appeals" is too broad the way you are amending it here, because it implies any kind of appeal within the system. Do you follow what I am saying?

Mr. Sweeney: Could that come under the word "proceedings"?

Mr. Laughren: I do not know. "Appeal" is "appeal."

Mr. Sweeney: Could the word "proceedings" include appeal at the level to which you are referring without specifically saying it? I do not know either; I am just asking.

Mr. Cain: If I am not mistaken, Mr. Laughren, section 80 in the current act on page 41--no, I am sorry.

Hon. Mr. Ramsay: Could we stand that down for a few minutes while we get a legal opinion on it?

Mr. Sweeney: Right. Moving ever forward.

Mr. Gillies: Subsection 29(2) says: "Section 79 of the said act is further amended by adding thereto the following subsection:

"(2) Every decision of the board and the reasons therefor shall be communicated promptly in writing to the parties of record."

Mr. Laughren: That is a good one. In the language of their choice.

Mr. Chairman: Does that carry? Carried.

Mr. Laughren: Before we go on, what about that? Where is the language thing contained in the bill? There was an amendment that the minister had.

Hon. Mr. Ramsay: Yes, we have an amendment.

Mr. Laughren: Does that cover something like this?

Hon. Mr. Ramsay: Not in the language of their choice, no. It covers English and French.

Mr. Sweeney: English and French only.

Mr. Laughren: But is the board not fairly good about writing in other languages too?

Hon. Mr. Ramsay: I think so. Mr. Cain just left.

Mr. Laughren: Now they have all jumped ship.

Interjection: It must be sinking.

Interjections.

Hon. Mr. Ramsay: Mr. Cain, while we will be moving an amendment that would have the decisions available in French and English, the question is, what about other languages? Do we not do that now to a certain extent?

Mr. Cain: It is rare that we provide information in other than French and English, the two languages of the country. Of course, we do provide oral responses. We talk to people in all the variety of the languages of the people who come before us. Written responses are normally in either French or English.

Mr. Laughren: In the legal office in Sudbury quite an array of languages is spoken, which is extremely helpful; it is not only French.

What if someone is Portuguese or Italian? Those are two significant groups that use the services of the board. Is there a way in which those people have almost an automatic way of indicating that they need communication in another language, in the forms or anything like that?

Mr. Cain: We pay attention to the forms. On a couple of the forms it asks the language. It is normally the case that if someone phones or comes in to see us and we recognize that he does not speak English, we provide the appropriate translation.

Mr. Lupusella: I am very sympathetic to the minister's concern, but it might cause a lot of problems. What about the same people coming to me speaking Portuguese and coming with the board's decisions in Portuguese? I have to go and seek assistance myself.

Even though I understand your goodwill, I am not sure that we are really helping the people and that such a practice would help people if they look up their own cases. I would not mind, but understanding the reality of life in Metropolitan Toronto, I know they will come to my office and I will have problems.

Hon. Mr. Ramsay: I think Mr. Lupusella has raised an excellent point.

Mr. Chairman: I am glad he decided to come back. Shall subsection 29(2) of the bill carry? Carried.

We have a legal opinion on subsection 29(1).

Dr. Wolfson: With respect to Mr. Laughren's question, the legal opinion, as I understand it, is that under section 79 of the act as amended, the board would still have the power to determine its practices and procedures regarding internal appeals under the rubric of applications and proceedings.

Mr. Chairman: That being the case, shall subsection 1 carry? Carried.

Section 29 agreed to.

4:10 p.m.

On section 30:

Mr. Gillies: Section 30 says: "Clause 81(c) of the said act is amended by inserting after 'worker' in the first line, 'spouse, child or.'"

Hon. Mr. Ramsay: This allows the board to compensate the spouse and children of the deceased worker for their travelling and living expenses when they are required to travel to attend board meetings.

Mr. Laughren: This is only for dependants of deceased workers; is that right? We have had a few problems--not many--when a worker could not come on his own for medical reasons. Does the board have the flexibility to pay for that worker's spouse to come with him? There would be things like a couple of meals, overnight accommodation, and things like that.

Mr. Cain: As it stands now, my understanding is that the board will pay if it is medically necessary for someone to accompany the injured worker, but not otherwise.

Mr. Laughren: Right; and if there is an appeal, and the worker needs a coworker there to testify as to the validity of the incidents which occurred on the job, those expenses are not paid?

Mr. Cain: I believe that when a witness has to be present the board does pay reasonable expenses for that person appearing.

Mr. Sweeney: They pay the travelling costs, do they not?

Mr. Cain: Yes.

Mr. Laughren: But you will not pay for the representative?

Mr. Cain: Not the representative, no.

Mr. Laughren: There have been times--and I do not know how you would resolve this--when my constituency assistant, who knows a lot about compensation, will not do an appeal. As Mr. Mancini points out, maybe I should do it, but there are times when I feel she is more qualified--most times--than I am to do it.

Mr. Mancini: Why does she not go for election?

Mr. Laughren: She did. She ran federally.

Anyway, she must come to Toronto, even though it is her money--

Interjection: Even yours.

Mr. Laughren: --even more seriously--and must look after her own expenses. There is no provision for that?

Mr. Cain: No, there is no provision for paying a representative's expenses.

Mr. Laughren: Would the minister be willing to consider an amendment?

Instead of clause 81(c) reading "worker, dependant," include "an injured worker and his witness" there--not "witness"; "representative." That is not a problem in Toronto, I understand that, but it is a problem in some parts of Ontario.

Hon. Mr. Ramsay: I do not want to carry it much further than we have here. I think the board has been flexible in the past and I think it is something the corporate board can look at as policy, when it is put in place.

Mr. Chairman: Also, with the advent of the worker's adviser group, it might not be quite so necessary for a representative to travel.

Mr. Laughren: Excellent point. As a matter of fact, that is the way to handle it, is it not? I am sure when the worker adviser travels to an appeal, the worker adviser's expenses will be paid--I would assume.

Mr. Chairman: Probably, yes.

Mr. Laughren: There is your answer then: "the worker's adviser or the worker's representative." Good point. I am glad you raised it.

Mr. Gillies: You know a better answer still, and we discussed this when we were up north. If you had four or five cases in Sudbury, all of which required people and their various witnesses and so on to travel to Toronto, it would obviously make more economic sense for the appeal to be held in Sudbury. You could send a couple of officials to Sudbury cheaper than you could send 20 or 25 people down to Toronto.

Mr. Laughren: Have you seen their expense accounts?

Mr. Mancini: I think the parliamentary secretary is being very helpful, Minister.

Hon. Mr. Ramsay: He always is.

Mr. Mancini: There is another Hansard quote for me.

Mr. Sweeney: Between him and the chairman, you are going to get it.

Mr. Chairman: With all your assistance and advice, is it agreed that clause 81(c) should stand as is?

Mr. Laughren: No, it is too restrictive.

Mr. Lupusella: We moved an amendment. Mr. Laughren--

Mr. Chairman: Mr. Laughren was searching for an amendment. I do not think he moved it.

Mr. Laughren: I think we will probably succeed in defeating this, and then I will move my amendment to it.

Mr. Chairman: Those in favour of clause 81(c). Opposed? Close, but not close enough. It is carried.

Section 30 agreed to.

On section 31:

Mr. Gillies: Subsection 1:

"Subsection 83(1) of the said act is amended by striking out 'commissioner of the board, or any other commissioner' in the first and second lines and inserting in lieu thereof 'member of the board of directors.'"

Mr. Chairman: That is fairly consistent with what we have been doing in that regard.

Carried? Carried.

Mr. Gillies: Subsection 2:

"Subsection 83(2) of the said act is amended by striking out 'commissioner thereof or any other commissioner' in the first and second lines and inserting in lieu thereof 'member of the board of directors.'"

Mr. Laughren: Can I ask a question on that? What about this whole question of third-party lawsuits, where the board would have some documentation in its records and the injured worker was suing the third party, which we discussed earlier. Would that mean the board could not be subpoenaed to come and provide evidence? I seek the guidance of yet another finely honed legal mind.

Mr. Sweeney: I went to law school.

Mr. Laughren: You will do.

Mr. W. R. Riddell: You are quite right that the section does empower the board to refuse to produce the medical records. In practice, the board co-operates if the injured worker makes the

request. We provide what we can. The problem is that the defendant in the action, usually the insurance company, wants all the medical records we have. We rely on this section among others to refuse to produce those records.

Mr. Laughren: I understand. You might end up doing more harm than good.

Mr. W. R. Riddell: That is policy. What we do is co-operate as much as we can to provide for the worker who is suing, but we resist having those records made available to the defence in the action.

Mr. Lupusella: With great respect, I still do not understand the point. If there is a car accident, for example, while the worker is employed by a particular company, the worker has the right either to take his case on his own or to authorize the board to look after the case. Am I correct? Is that the present procedure?

Mr. W. R. Riddell: That is correct. That is section 8.

Mr. Lupusella: If the worker decides not to take the case or authorize the board to look after the case, what kind of medical information does the board have regarding this injured worker? I really do not understand that.

Mr. W. R. Riddell: Probably none in a case such as the one to which you are referring, unless there were previous injuries. Let me make up an example.

Mr. Lupusella: Okay. That is a different typical case.

Mr. W. R. Riddell: Let us assume, and we get perhaps 20 such requests a week--

Mr. Lupusella: You are talking about an injured worker who is already receiving a permanent disability awarded by the board, has gone back to work and is the victim of a car accident. He has the right to choose. The two parties might decide the extent of the disability caused by the accident and the disability approved by the board as a result of the permanent disability award granted previously.

Mr. W. R. Riddell: Yes.

Mr. Lupusella: Okay, I understand now.

Mr. W. R. Riddell: In such a case we co-operate to the extent we can, and I hope I was fairly careful in how I worded that, because there is the section in the act that gives privilege in the medical reports that are submitted. That privilege is in the hands of the physicians. We cannot give the reports, but we can give the names of the physicians who treated and that sort of thing.

4:20 p.m.

We co-operate in so far as we can there, but the usual request does not come from the injured worker's lawyer in this noncompensable, it comes from the insurer of the defendant which would love the complete history of all the claims. That is what we resist, and we use this section as one of the sections, plus some case law, to resist turning those records over to the defendant.

Mr. Sweeney: That is a good explanation, thank you.

Mr. Chairman: Shall subsection 31(2) carry? Carried.

Mr. Gillies: Subsection 31(3) reads, "Subsection 83(3) of the said act is amended by striking out 'commissioner thereof or any other commissioner' in the second line and inserting in lieu thereof 'member of the board of directors.'"

Mr. Chairman: Shall subsection 31(3) carry? Carried.

Mr. Gillies: Subsection 31(4) reads, "Subsection 83(4) of the said act is amended by striking out "commissioner thereof or any other commissioner" in the third and fourth lines and inserting in lieu thereof "member of the board of directors."

Mr. Chairman: Shall subsection 31(4) carry? Carried.

Section 31 agreed to.

On section 32:

Mr. Gillies: Mr. Chairman, section 32 reads, "The said act is amended by adding thereto the following sections: Section 86(a): There is hereby constituted a tribunal to be known as the Worker's Compensation Appeals Tribunal.

Mr. Lupusella: Before it is passed, Mr. Chairman, there was more dispute about the definition of a tribunal per se because it was giving the impression to people of the clear judicial process of a tribunal. Considering that the board is a quasi-judicial process, I am wondering if we are really using the right word when we use the word "tribunal." I need your assistance on that.

Mr. Revell: I think in this situation the word "tribunal" is quite appropriate. It is an appeals board. Yes, it is a quasi-judicial body, but it certainly is sitting, hearing evidence and making decisions. It is clear what we mean in the definition. Whenever we refer to the appeals tribunal by definition at the front of the act people will know that we are referring to this particular body constituted under this particular act. I see nothing wrong with it.

Mr. Lupusella: The reason I am raising this issue is because in the past injured workers have been complaining about the use of the word "tribunal." In fact, the terminology has been changed--for example, an adjudicator's hearing or an appeal board hearing--away from use of the terminology "tribunal." So we are going back to the same use of the word "tribunal." That does not bother me, but it used to bother a lot of people in the past.

Mr. Chairman: Shall subsection 86(a) carry? Carried.

Mr. Gillies: Subsection 86(b)(1) reads, "The Lieutenant Governor in Council shall appoint a chairman of the appeals tribunal, one or more vice-chairmen of the appeals tribunal and as many members of the appeals tribunal, equal in number, representative of employers and workers respectively as is considered appropriate."

Mr. Chairman: Shall subsection 86(b)(1) carry? Carried.

Mr. Gillies:: Subsection 86(b)(2) reads, "The remuneration, benefits and allowances of the members of the appeals tribunal shall be determined by the Lieutenant Governor in Council."

Mr. Mancini: Is this done by the board itself through past scales, or is this going to be completely new?

Hon. Mr. Ramsay: We have not given any consideration to that one as yet, Mr. Mancini.

Mr. Sweeney: The tribunal will see to it.

Mr. Mancini: I know that. So you do not have any idea at all as to what allowances they will have?

Hon. Mr. Ramsay: No, I am sorry we have not given any consideration to the remuneration or benefits at this time.

Mr. Mancini: So you are not planning on passing this act too soon?

Hon. Mr. Ramsay: It is sort of a question of first things first, I suppose.

Mr. Mancini: Because I want to make sure you pay enough to hire all those outstanding, well-qualified people you were talking about earlier.

Hon. Mr. Ramsay: We will find them, do not worry.

Mr. Mancini: I am sure you will.

Mr. Laughren: I bet you will not see any Liberals running around.

Mr. Lupusella: Mr. Chairman, I would like to associate myself with the feelings expressed by Mr. Mancini on several occasions. I would like to remind the members that in the past we have been faced with overgenerous remuneration given to the people working at the board. I would like to remind the minister--

Mr. Mancini: Not all the people.

Mr. Lupusella: Not all. I am talking about the top people. I was trying to clarify my statement. For example, the

present chairman of the board is receiving the same amount as the Premier (Mr. Davis) receives for governing Ontario. Am I correct or not? His salary is in the \$60,000 range.

Mr. Riddell: No, it is more than that.

Mr. Lupusella: It is more than that? Is it \$70,000?

Mr. Havrot: And they are doing a good job, too.

Hon. Mr. Ramsay: No, the Premier gets more than that. It is in that little book you got in the mail yesterday.

Mr. Lupusella: The Premier is in the range of \$70,000.

Hon. Mr. Ramsay: The book just came out from the legislative office yesterday.

Mr. Lupusella: I did not see the latest figure but is it in the range of \$70,000 now?

Hon. Mr. Ramsay: The Premier? It is higher than that. I am including the expense allowance when I say that.

Mr. Lupusella: No, I am talking about the salary per se. How much is the Premier's salary? Is it \$70,000?

Mr. Riddell: It is too damned much, whatever it is.

Hon. Mr. Ramsay: I can get those figures for you, but I believe Mr. Sweeney is right when he says the salary of the chairman of the Workers' Compensation Board is equivalent to the salary of a cabinet minister.

Mr. Laughren: I will bet you it is more than that.

Mr. Lupusella: No, no, it is more than that.

Mr. Sweeney: We asked once before and that is what we were told.

Hon. Mr. Ramsay: I will get it for you overnight.

Mr. Lupusella: I think the point raised by Mr. Mancini is valid.

Mr. Laughren: If that is true, then there a lot of overpaid people around here.

Mr. Lupusella: I am not prepared to vote on this section until we get the right figures.

Mr. Gillies: Why stand it down? You have to pay them something. The subsection says nothing about the amount; that is an administrative thing.

Mr. Lupusella: I am planning to move an amendment--

Mr. Gillies: To fix the salaries?

Mr. Lupusella: --after receiving the general information about the Premier's salary and making the comparison.

Mr. Chairman: Rather than do anything with it, stand it down or pass it, it is 4:30. Perhaps we can discuss it tomorrow, but come here ready to vote on it. Everybody go back and read the little brown book that we all received in the last day or so and we will know who gets what.

The committee adjourned at 4:28 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

WEDNESDAY, SEPTEMBER 12, 1984

Morning sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)
Gillies, P. A. (Brantford PC)
Havrot, E. M. (Timiskaming PC)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Kennedy, R. D. (Mississauga South PC)
Laughren, F. (Nickel Belt NDP)
Lupusella, A. (Dovercourt NDP)
Mancini, R. (Essex South L)
Riddell, J. K. (Huron-Middlesex L)
Sweeney, J. (Kitchener-Wilmot L)
Yakabuski, P. J. (Renfrew South PC)

Substitution:

Kolyn, A. (Lakeshore PC) for Mr. Villeneuve

Also taking part:

Gillies, P. A. (Brantford PC), Parliamentary Assistant to the
Minister of Labour

Ramsay, Hon. R. H., Minister of Labour (Sault Ste. Marie PC)

Clerk pro tem: Carrozza, F.

Staff: Revell, D., Legislative Counsel

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation
Board

Hess, P. A., Director, Legal Services Branch

Riddell, W. R., Board Solicitor and General Counsel, Workers'
Compensation Board

Muir, C., Researcher

Wolfson, Dr. A. D., Assistant Deputy Minister, Program Analysis
and Implementation

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, September 12, 1984

The committee met at 10:10 a.m. in committee room 2.

WORKERS' COMPENSATION AMENDMENT ACT
(continued)

Resuming the adjourned consideration of Bill 101, An Act to amend the Workers' Compensation Act.

Mr. Chairman: If committee members would take their seats, I recognize a quorum.

On section 32:

Mr. Chairman: All right, I think we pretty well finished our discussion on subsection 86b(2) with regard to remuneration, page 22, the second item down.

Shall that subsection carry? Carried.

Mr. Lupusella: Mr. Chairman, not subsection 86b(2). We were supposed to get the figures on remuneration. Am I correct?

Hon. Mr. Ramsay: No, with respect, I think what I suggested yesterday was that we have not had a chance to look at this at all. They will be reasonable and in line with what is being paid now and paid elsewhere, but as far as actually sitting down and working out the remunerations, benefits and allowances of the members, we have not had an opportunity to do that.

Mr. Sweeney: I think the record would show that you did agree to provide the present salaries, if I am not mistaken, not the ones you are going to do.

Hon. Mr. Ramsay: No, I think I was asked to provide, and agreed to, the salaries of the chairman and vice-chairman.

Mr. Sweeney: Yes.

Hon. Mr. Ramsay: Was I also asked for the salaries of the appeals tribunal members?

Mr. Sweeney: No, I do not remember that.

Hon. Mr. Ramsay: There is no problem.

Mr. Lupusella: The figures are public.

Hon. Mr. Ramsay: I gave some of those figures to the member for Nickel Belt (Mr. Laughren) yesterday. I gave him the ranges yesterday. That was the corporate and noncorporate board.

Mr. Lupusella: Do you have those figures?

Mr. Laughren: No, I tore up the memo.

Hon. Mr. Ramsay: Whatever information you want, I will get it for you. Let me just itemize here to make sure we are on target. The chairman and the vice-chairman, you want those two figures.

Mr. Lupusella: And the board members.

Hon. Mr. Ramsay: And the board members. I did give the ranges to your colleague yesterday.

Mr. Laughren: The noncorporate commissioners and corporate commissioners.

Hon. Mr. Ramsay: Yes.

Mr. Lupusella: Do you have these figures?

Mr. Laughren: I did not write them down.

Hon. Mr. Ramsay: I gave you the sheet of paper.

Mr. Laughren: No.

Hon. Mr. Ramsay: I know I did.

Mr. Laughren: Perhaps you threw it out.

Hon. Mr. Ramsay: I did not. I gave it to you.

Mr. Lupusella: Maybe the figures can be provided.

Hon. Mr. Ramsay: We will get them again.

Mr. Chairman: I do not think that will prohibit us from passing this item. Will it carry? Carried.

Hon. Mr. Ramsay: Yes, corporate and noncorporate commissioners.

Mr. Sweeney: I think you made a commitment to Remo to give him the chairman and vice-chairman salaries.

Hon. Mr. Ramsay: Yes, I did. I do recall that. We will get all that for you.

Mr. Chairman: Next, "(3) The chairman of the appeals tribunal, subject to such guidelines as may be established by the Management Board of Cabinet and subject to the provisions of the Crown Employees Collective Bargaining Act, may establish job classifications, personnel qualifications and salary ranges for officers and employees of the appeals tribunal, and the chairman may appoint, promote and employ the same in conformity with the classifications, qualifications and salary ranges so established by the chairman."

Does that carry?

Mr. Lupusella: What is so different from the present procedure within this subsection?

Mr. Sweeney: There is no appeals tribunal at present.

Mr. Lupusella: Aside from the appeals tribunal.

Mr. Revell: There is no appeals tribunal. This parallels--

Mr. Lupusella: The present guidelines.

Mr. Revell: --the powers of the board chairman in exactly the same manner. In fact, we amended earlier the complementary provision that deals with the board.

Mr. Lupusella: Beside the inclusion of the appeals tribunal people, there is nothing new in this subsection. Is that correct?

Mr. Revell: It is completely separate from the board. This is the appeals tribunal chairman who has these powers. The board chairman has a separate set of powers with respect to the board.

Mr. Lupusella: Okay. The chairman had the same power as described within subsection 86b(3) within the present structure of--

Mr. Revell: I see what you are getting at, yes. The chairman of the board has the same power.

Mr. Lupusella: The only new component is the appeals tribunal.

Mr. Revell: Yes.

Mr. Chairman: We are clear on that. Shall that carry?
Carried.

The next subsection reads, "(4) For the purposes of section 74 only, every full-time member of the appeals tribunal and every person appointed under subsection 3 to full-time employment shall be deemed to be an employee of the board."

Mr. Lupusella: We should review 74.

Mr. Revell: The superannuation fund.

Mr. Laughren: It is for superannuation purposes?

Mr. Revell: Yes.

Mr. Laughren: Not to disabuse people of the idea that it is independent.

Mr. Chairman: No, it is superannuation. Does that carry?
Carried.

The next one is, "(5) The costs and expenses associated with the administration of the appeals tribunal, including the remuneration and expenses of its members, officers and employees, shall form part of the administration expenses of the board."

Carried? Carried.

Next we have, "86c(1) The chairman of the appeals tribunal is its chief executive officer and shall preside at its meetings and upon all panels of the appeals tribunal of which the chairman is a member."

Mr. Laughren: Mr. Chairman, may I ask a question on that?

Mr. Chairman: Sure.

Mr. Laughren: I am trying to get that last part clear in my head, "preside at all its meetings and upon all panels of the appeals tribunal of which the chairman is a member."

Mr. Chairman: Presumably he is a member; there are several panels. Is that correct?

Mr. Revell: Would you like me to clarify that?

Mr. Chairman: You can probably do it better than I can.

Mr. Revell: The appeals tribunal may sit in two different ways. It may sit as the full appeals tribunal and that would be all members of it. That is very seldom done in most tribunals. Normally, you create a subset, a panel, of three members and this is saying that where there is a panel and if the chairman is a member of that panel then he is the presiding officer.

Mr. Sweeney: Whenever he is there, he takes over.

Mr. Revell: Yes, basically that is it.

Mr. Laughren: What we do not know is how many members of the appeals tribunal there would be. Did I miss that?

Mr. Sweeney: That was never limited. It was never defined.

Mr. Revell: It is equal in numbers.

Mr. Sweeney: A panel of 12, or is it open?

Mr. Laughren: There could be dozens, could there not?

10:20 a.m.

Hon. Mr. Ramsay: It depends on the work load.

Mr. Laughren: But they would not be full time; they would just be appointed.

Mr. Chairman: Called in as required, I suppose. They would have to be appointed by the Lieutenant Governor to be available. Is that how it would work?

Hon. Mr. Ramsay: It would be a panel.

Mr. Laughren: But they would have to have pretty flexible schedules, would they not?

Hon. Mr. Ramsay: Yes, we would have a panel of names that would be drawn.

Mr. Lupusella: Mr. Laughren, Mr. Sweeney.

Mr. Laughren: Only if we lose.

Mr. Sweeney: I do not plan to be on it.

Mr. Lupusella: The only problem I have, and maybe I am missing something, is in whether the chairman of the appeals tribunal is a permanent position.

Hon. Mr. Ramsay: Yes.

Mr. Lupusella: Which means we are going to be faced with the same chairman of the appeals tribunal for maybe 20 years or whatever, or is it an appointment that will last three years and then be renewed?

Hon. Mr. Ramsay: Yes, it would be three years. As I said in my opening remarks, these appointments can be terminated.

Mr. Laughren: Without breaking cabinet secrecy, are there cabinet meetings in which you do nothing but make appointments?

Hon. Mr. Ramsay: This is what I said in the opening statement last Thursday. "The normal three-year period for such appointments will be observed, although this does not preclude the rescinding of an appointment before that time."

Mr. Lupusella: I am satisfied with that. The reason I am raising this concern is that we might be faced with a chairman of the appeals tribunal who might develop adversarial feelings against injured workers within the operation of the appeals tribunal. I would not like to see an appointment renewed when we are faced with clear-cut cases of incidents which are working against injured workers.

Mr. Laughren: The government will have changed by then anyway.

Mr. Chairman: Shall subsection 86c(1) carry? Carried.

Subsection 86c(2) reads: "In the absence from Ontario of the

chairman, the chairman's inability to act or where the office is vacant, the chairman's duties shall be performed by a vice-chairman designated to act by the chairman or, where the chairman has failed so to designate, by a vice-chairman designated to act by the Minister of Labour."

Mr. Sweeney: One question please. There was some debate earlier on as to whether or not the chairman of the appeals tribunal should be even an ex officio member of the corporate board. Under subsection 2 there is the possibility of a vice-chairman acting in his place for a period of time.

What would be the situation in that case? Would he just automatically assume the position of chairman and all the functions that go with it, or does he remain as the vice-chairman but simply act in the chairman's capacity when he happened to be present in such a position?

Hon. Mr. Ramsay: I missed the first part of your question. I got the last part of it.

Mr. Sweeney: You will recall that earlier in this bill we had some discussion and disagreement as to whether or not the chairman of the appeals tribunal should be an ex officio member of the corporate board.

Hon. Mr. Ramsay: Yes.

Mr. Sweeney: Under this subsection 2, it would appear that there would be situations where the vice-chairman could be, in effect, the acting chairman for a fairly long period of time, a month or something like that as opposed to a day. Would that relationship hold true for him as well?

Hon. Mr. Ramsay: Being ex officio? Yes.

Mr. Sweeney: He would be, in effect, an acting chairman.

Mr. Chairman: It says, "the chairman's duties shall be performed by a vice-chairman..."

Mr. Sweeney: But his duties and his position are two different things.

Mr. Chairman: Yes, that is right.

Mr. Sweeney: His position as a member of the corporate board is a position, not a duty. It is not something that he has to do. It is not a function he has to perform.

Mr. Chairman: I guess you are right.

Mr. Sweeney: I do not think it makes a heck of a lot of difference. I am just--

Hon. Mr. Ramsay: Excuse me, I just had another interpretation here. A vice-chairman would not be a member of the corporate board.

Mr. Sweeney: He would not be. In other words, he would retain his title as vice-chairman and simply be acting in the capacity of a chairman, but he would not assume the position of chairman and all that goes with it.

Hon. Mr. Ramsay: That is correct.

Mr. Sweeney: Never mind, let us leave it until we hit it again.

Mr. Chairman: Shall subsection 86c(2) carry? Carried.

Mr. Lupusella: Mr. Chairman, before we read the next subsection, may I congratulate the minister for voicing the concern we raised about our feelings on the commercial on asbestos. I wrote a letter to the Construction Safety Association of Ontario about its televised commercial on asbestos and would like to congratulate you on voicing the concern raised by Mr. Laughren and myself.

Hon. Mr. Ramsay: And Mr. Johnston.

Mr. Lupusella: Thank you.

Mr. Chairman: Subsection 86c(3): "Whenever it appears that a vice-chairman has acted for and instead of the chairman, it shall be presumed that the vice-chairman has so acted in the absence or disability of the chairman or because of a vacancy in the office of the chairman."

Shall that carry? Carried.

Subsection 86d(1): "A quorum shall consist of the chairman of the appeals tribunal or a vice-chairman of the appeals tribunal designated by the chairman to act in place of the chairman and not less than two members of the appeals tribunal to be equal in number and representative of employers and workers."

Mr. Laughren: Mr. Chairman, I think you should change that to read, "to be equal in number and representative of employers and workers or injured workers."

Mr. Chairman: It could be other unions, or the Ontario Federation of Labour could do the appointment and it may not be representative of injured workers. Is that what you are suggesting?

Mr. Laughren: Yes, over the years the injured workers have become what I think is a permanent fixture in Ontario, sad to say, and they should be recognized in the bill by allowing them to be pointed out this way, by saying "to be equal in number and representative of employers and workers or injured workers."

Hon. Mr. Ramsay: Does that not raise a problem of balance, in talking about the employer's groups as well?

Mr. Laughren: I am not saying it should be both. I am saying "or."

Mr. Sweeney: Mr. Chairman, if I may speak to that, there is a possibility of situations arising when the best interests of noninjured workers and injured workers may not be coincidental. That is something we have to recognize. It was a point that came up on at least one occasion from the witnesses appearing before us.

As supportive as the various worker organizations are of injured workers' rights, there are times when their needs simply are not coincidental. Therefore, the option should clearly be made available.

Depending upon what is being appealed, it may be in the best interest--we are assuming, of course, that you have injured workers on that list, since you indicated to us earlier that "workers" does include injured workers. So by putting the "or" in there, that provides the opportunity for a particular case to be heard by representatives of a group who may not be best represented by another group.

10:30 a.m.

Hon. Mr. Ramsay: On the surface it looks fine to me. Let us stand it down.

Mr. Chairman: Subsection 86d(2): "A quorum may exercise all the jurisdiction and powers of the appeals tribunal."

Shall that carry? Carried.

Section 86d(3): "The decision of the majority of the quorum present and constituting the appeals tribunal is the decision thereof, but if there is no majority the decision of the chairman or the vice-chairman governs."

Agreed? Carried.

I wonder if Mr. Riddell would like to read the next one for me, please.

Mr. Riddell: I do not know whether I can make myself heard or not.

Mr. Sweeney: Before you go on, may I just ask a question for clarification? I cannot put my finger on it, but there was a section earlier that says the decision of the appeals tribunal is final. I do not know exactly where it is, but it is something to that effect.

Is there any possibility that a decision made by a majority of a quorum--when you get down that low, you are getting a small group of people--could hinge on an important issue or a principle? How would you ever get at that?

Let us say we are talking of a normal tribunal of nine people. The quorum ends up being five. The majority of that is three. So in effect you have three people--am I wrong?

Hon. Mr. Ramsay: Excuse me, I believe you are wrong.

These would be three-person panels similar to the Ontario Labour Relations Board.

Mr. Sweeney: Excuse me, we are looking at section 86d.

Hon. Mr. Ramsay: Section 86d, yes.

Mr. Sweeney: We are talking about the appeals tribunal. We are not talking about the panel. As Mr. Revell pointed out earlier, there are two different ways in which the tribunal can sit. You can have the whole tribunal and then you can have subdivisions of that tribunal. Am I misunderstanding something?

Hon. Mr. Ramsay: Maybe I am misunderstanding it.

Mr. Sweeney: I am assuming there is a larger body that will sit at certain times. There are other times when this larger body will break down into smaller subgroups.

Hon. Mr. Ramsay: That is not my understanding.

Mr. Sweeney: Maybe someone can explain that then.

Ms. Muir: The quorum mentioned here I think refers to the three-person panel, which would consist of the chairman, the vice-chairman and also two side members of the tribunal, according to the wording there.

Mr. Laughren: It says "not less than two members."

Mr. Sweeney: I guess maybe what I am reaching for--and I am uncertain about this--there is not a larger panel that forms the basic tribunal, a group of seven, eight or nine people, who will sit for certain cases? That is not the situation?

Hon. Mr. Ramsay: Not to my knowledge.

Mr. Cain: Mr. Revell can explain the difference.

Mr. Revell: I think subsection 86d(3) is in fact speaking to that very problem. It may not be intended that the appeals tribunal will sit other than in panels. If it does sit other than in panels--I mean, in a whole group--and one of the members of the appeals tribunal does not come forward, then it is quite possible to end up with a tied vote. You would have a chairman, worker representatives and an equal number of employer representatives.

Mr. Laughren: There could be one each.

Mr. Revell: If one misses a meeting, you can end up with a tied-vote situation, so I think subsection 86d(3) is speaking to that situation.

I must admit that in subsection 86e(3), I have a bit of a problem because it deals with exactly the same issue. Frankly, I cannot find any reason why we have the--

Mr. Sweeney: If we look at subsection 86d(1), it simply

says "not less than two members." It could be considerably more than two. A decision could be made to have seven or eight members there. That would be the panel that was set up.

Hon. Mr. Ramsay: That would be unusual, but it could be done.

Mr. Revell: Excuse me. A panel must always consist of three members, the way I read the bill.

Mr. Cain: That is section 86e.

Mr. Revell: Subsection 86e(2) specifically provides for the constitution of panels. I am just trying to go back through some of my material here to see if I can find the reference.

Mr. Laughren: While you are doing that, how on earth do you explain subsection 86e(2), which states, "A panel of the appeals tribunal shall consist of three members as follows: 1. The chairman or a vice-chairman of the appeals tribunal"?

How many vice-chairmen are you going to have? How in the world are they going to be able to cover off all these appeals?

Hon. Mr. Ramsay: As I understand it, this will be identical to the Ontario Labour Relations Board where there will be full-time chairmen and vice-chairmen.

Mr. Laughren: A whole bunch of vice-chairmen?

Hon. Mr. Ramsay: Yes. Then the side members will be appointed from a list of appropriate people.

Mr. Laughren: You could have 25.

Hon. Mr. Ramsay: Yes. As I said, just like the OLRB. Right now, we have eight chairmen plus several full-time vice-chairmen.

Mr. Laughren: I see.

Mr. Sweeney: If we want to look at a parallel, does the labour relations board, as a board, meet as a larger body other than the panel description you just gave us?

Hon. Mr. Ramsay: I have never had that come to my attention, that they have met as a larger body. They might on occasion, to discuss policy or things of that nature.

Mr. Sweeney: No, I was thinking as an appeals tribunal.

Hon. Mr. Ramsay: No, not to my knowledge.

Mr. Sweeney: You do not visualize that this appeals tribunal will operate in that way?

Hon. Mr. Ramsay: No. I can see the appeals tribunal--

Mr. Sweeney: In other words, for all practical purposes, we are looking at the appeals tribunal operating in every case as a panel.

Mr. Lupusella: That is not spelled out in the bill.

Hon. Mr. Ramsay: They could meet to discuss general policy or something like that, but I cannot see them sitting to adjudicate an appeal other than in the manner that is described here.

Mr. Sweeney: That is not the way I understood it earlier.

Mr. Lupusella: I think John is right, because subsection 3 gives the opportunity not to have a quorum, which means we might be faced with cases in which the appeals tribunal will not have a quorum, meaning it is composed of a chairman and a vice-chairman.

Hon. Mr. Ramsay: Can we stand that down until Mr. Hess--

Mr. Lupusella: No.

Mr. Revell: It think it would be a good idea to stand it down. I do not have any notes on section 86d present, but my understanding of it, as I recall, is what I said earlier. It may never be intended to work that way, but there is a possibility.

Mr. Lupusella: Section 86c is clear on how the panel should be composed, but subsection 86c(3) might break the rule.

Hon. Mr. Ramsay: We have the other Mr. Riddell with us today, so perhaps he can cast some light on it.

Mr. W. R. Riddell: My recollection when we were drafting sections 86d and 86e is that 86d would provide for one of two things. Either where you had a case of such importance that you wanted more than a tribunal, so the whole tribunal could sit. Second, there could be policy matters. I cannot tell you what they might be. It might be a simple thing such as fixing the amount for mileage for witnesses or whatever. There are obviously going to be policy decisions that just affect the operation of the appeals tribunal where they would have to decide things.

The thought line and the difference, as I recall it, between sections 86d and 86e is that 86e is to deal with the ordinary case where you have a three-member tribunal, one from labour, one from management and the chairman. The other is for either important cases or policy matters affecting the appeals tribunal with a much larger number of persons hearing the appeal or hearing whatever the matter is.

Mr. Laughren: While you are here, could I ask you a question?

Mr. Chairman: As long as it is about workers' compensation, dealing with the matter we have been dealing with.

10:40 a.m.

Mr. Laughren: I will not ask him about the bar exams today.

In subsection 86e(3), is it your opinion that the decision of the majority of a panel, just three people, is the decision of the appeals tribunal, and if there is no majority, the decision of the chairman of the panel governs? Does that imply that if two other people vote differently, then the chairman casts the deciding vote? Right?

Mr. W. R. Riddell: This would be the way I would take it, yes.

Mr. Laughren: It could not meet without those two people being there.

Mr. W. R. Riddell: I believe you must have the three there because subsection 2 says, "shall consist of three members" and it sets out who they are.

Mr. Lupusella: By reading subsection 3 now I understand that it should be a majority of the quorum in any case. In case there is no majority vote of the appeals tribunal, for example, the chairman's or vice-chairman's position will govern the vote. I got the message, but--

Mr. Sweeney: Let me come back full circle, if I may. My concern when I raised it under 86d was that when you start reducing a tribunal to a quorum and then to a majority of that quorum, you could get a small number of people making a decision that I understand is final and binding. Is that right?

Hon. Mr. Ramsay: What do you mean by small number?

Mr. Sweeney: If I understood Mr. Riddell properly, the opportunity under 86d is to call together a larger number of members of the tribunal for a decision on policy or some matter like that. Let me go back to my original analogy. It is entirely possible that the number called together could be nine. Under a quorum you could have as few as four, according to subsection 86d(1), the chairman, vice-chairman and at least one member representing employers and workers. Then you get a majority of those making a decision which is final and binding.

My question is, in a situation such as described in 86d(1) you are talking about making policy decisions. There seems to be some need for an appeal or review mechanism or something like that. I have no qualms about the appeals panel making a final decision. Somewhere along the line the decision has to be final. That is okay.

It is very clearly defined as to who will be on the panel. It seems fair and representative. It is in this whole question of distilling a panel, to a quorum to a majority that you can get down to a pretty small number. If that does not concern the minister, then okay. He has to live with those decisions.

Hon. Mr. Ramsay: I feel the Ontario Labour Relations Board has worked extremely well and this is basically--

Mr. Sweeney: And you see it as a model.

Hon. Mr. Ramsay: Yes.

Mr. W. R. Riddell: May I add something? If you look on page 26, subsection 86n(1) indicates, "Where a decision of the appeals tribunal turns upon an interpretation of the policy and general law of this act," it can then be reviewed by the board. There is a review mechanism, I suggest, from a decision that might be made under 86d.

Mr. Sweeney: It says, "the board may, in its discretion, stay the enforcement or execution of the order...review and determine," yes.

Mr. W. R. Riddell: And may hold a hearing, if they so choose, under subsection 2.

Mr. Chairman: We have finished with 86d except we stood down subsection 1.

Mr. Revell: Before we move on, I would like to point out one thing. There are going to be a number of provisions.

Mr. Laughren made a suggestion earlier, under subsection 86d(1), that "injured workers" be included. I would point out that if that amendment is brought forward and carried, it will necessitate a number of other amendments. It will necessitate opening up 86b(1) I believe and any other place, such as paragraph 86e(2)3, which deals with representatives of workers. There will be a number of complementary amendments required to implement Mr. Laughren's amendment.

Before we move on, I thought we should not lose track of that.

Mr. Chairman: We should have an agreement that whatever decision is made on 86d(1) should stand in every place that refers to workers.

Mr. Lupusella: I have a minor point on subsection 3. We are talking about the majority vote of a quorum. In case there is no majority and there is a tie, the decision of the chairman or vice-chairman governs.

To make it clear, can we include that if there is no majority vote, the decision of the chairman or vice-chairman governs, so that at least we might exclude the double interpretation that if there is no majority of the quorum the decision of the chairman or the vice-chairman governs? This is just to make it more clear.

I do not think we are changing the principle of subsection 3 by including "vote" after "majority." Maybe the legal counsel can assist us.

Mr. Chairman: Yes. I think legal counsel might answer that.

Mr. Lupusella: I understood the principle incorporated within subsection 3 when we were talking about "vote," and there is no majority vote, or there is a tie, the chairman or vice-chairman's position will govern the final decision. Can we incorporate "vote" after "majority"? If there is no majority vote, the decision of the chairman or the vice-chairman governs. Do we change the structure of the subsection?

Mr. Revell: Frankly, I will have to admit that subsection 3 of this section gives me some trouble. Without the guidance of my notes--they may not be of much help either. This was a very complicated bill, as you can appreciate from the draft.

In a three-man tribunal I, frankly, do not see how there can ever be anything less than a majority vote. You have three people present. If one of them disqualifies himself or herself, then I submit you no longer have a tribunal. You will have to stop and reconstitute the panel, as far as I know.

Maybe Mr. Riddell can give me some guidance on that. I am not in the general, day-to-day administrative law field. It would be my understanding that when you constitute a three-man tribunal and one person disqualifies himself, you no longer have a tribunal.

Mr. W. R. Riddell: I agree.

Mr. Lupusella: Because there is no quorum.

Mr. Revell: In that case, the only way you could ever get a decision would be to have all three people sit down and decide. I think the subsection can be amended by stopping at the word "tribunal." I am not sure about that. I cannot see any reason for the words, "but if there is no majority, the decision of the chairman of the panel governs."

Mr. W. R. Riddell: I agree completely.

10:50 a.m.

Mr. Lupusella: It is more clear, and it does not give the double interpretation that in some cases maybe the quorum is not necessary. That is the feeling I get from reading subsection 86d(3), even though we understand the mechanics of the appeals tribunal, that they can sit if there is no quorum.

Mr. Revell: I have a suspicion that what happened, Mr. Lupusella, was that in drafting this--one of the great bugbears of legislative draftsmen is that, where you have like provisions, they read alike. I have a feeling that 86d(3) and 86e(3) were drafted in the desire to be close in wording.

Mr. Lupusella: I do not have any objection to--

Mr. Revell: I would recommend that somebody move that

the words "and if there is no majority the decision of the chairman of the panel governs" be deleted.

Mr. Chairman: You are talking about section 86e(3). Tony was originally talking about 86d(3). He was concerned about missing the word "vote"--whether it should say "no majority vote."

Mr. Lupusella: My question was: By adding "vote" after "majority," are we changing the principle of subsection 3 so much, or is it in accordance with the principle of the draft?

Mr. Revell: I do not think that adding the word "vote" would hurt if the members of the committee felt that would clarify it.

Mr. Lupusella: That would clarify it in my mind. I do not know whether it would in other members' minds.

Mr. Sweeney: What other possible interpretation is there to it?

Mr. Lupusella: Even though a quorum should exist in any case, I get the feeling, by reading subsection 3, that an exception can sometimes be made.

Mr. Chairman: We have already carried section 86d(3), but if it is the wish of the committee, we could open it up again, throw in "vote," and close it up again. Is there any dissenting voice on opening 86d(3)?

We understand the word "vote" is going to be inserted. Perhaps Mr. Revell can--

Mr. Revell: I will draft it according to the wishes of the chair.

Mr. Chairman: Okay. It is understood there is an amendment by Mr. Lupusella that the word "vote" appear between "majority" and "the." Is that agreed?

Shall subsection 86d(3) of the act, as amended, carry?
Carried.

Hon. Mr. Ramsay: Before you go on, I have the answers to the questions on the salaries that were asked at the beginning, if anybody wants to make a note of them.

The chairman, as I speculated yesterday, receives a salary that is in the range of the deputy ministers' salaries; it is \$73,200. The vice-chairman is in the same range, \$73,200. They are both in the range of the deputy ministers. Mr. Alexander, the chairman, gets an additional \$5,000 special assignment for being chairman. However, the salaries, as such, are identical.

The vice-chairman of appeals gets a salary of \$68,995. The commissioner of appeals gets \$64,463. There are two of them; they are identical.

Those are the corporate officers. The salaries of the noncorporate officers--there is a list of them here--range from \$52,673 to \$58,200. There are nine of them, and they are in that range, most of them at the \$52,673 level; five of them are at that level.

Mr. Laughren: That is probably not too high, considering that they probably have to work a 40-hour week.

Mr. Chairman: Are we ready to go on to section 86e now?

Mr. Revell: It is interesting to note, though, that they are all paid higher salaries than the members of Parliament, which probably explains the reason there is not a great deluge of people running for Parliament, Jack. Would you agree with me there?

Mr. Riddell: Agreed.

Subsection 86e(1): "The chairman of the appeals tribunal may establish panels of the appeals tribunal and a panel has all the jurisdiction and powers of the appeals tribunal."

Mr. Chairman: Shall that carry? Carried.

Mr. Riddell: Subsection 2: "A panel of the appeals tribunal shall consist of three members as follows:

"1. The chairman or a vice-chairman of the appeals tribunal.

"2. One member of the appeals tribunal representative of employers.

"3. One member of the appeals tribunal representative of workers."

Mr. Sweeney: Or injured workers.

Mr. Chairman: Depending on what the outcome of the future debate is. Maybe you were away at the time. I suggested, and this point was raised by Mr. Revell, that wherever that appears there are going to have to be amendments made, so it may read "workers or injured workers". Carried? Carried.

Mr. Riddell: Subsection 86e(3): "The decision of the majority of a panel consisting of three persons is the decision of the appeals tribunal and if there is no majority the decision of the chairman of the panel governs."

Mr. Revell: I just happen to have an amendment which someone might want to move after I have read it. It is to the effect that subsection 86e(3) of the act, as set out in section 32 of the bill, be amended by striking out "and if there is no majority the decision of the chairman of the panel governs."

Mr. Chairman: Mr. Sweeney moves that subsection 86e(3) of the act, as set out in section 32 of the bill, be amended by striking out "and if there is no majority the decision of the chairman of the panel governs."

Shall subsection 86e(3), as amended, carry? Carried.

Mr. Riddell: Do you want me to carry on reading these?

Mr. Chairman: Yes, please.

Mr. Riddell: Section 86f, "Where the chairman, a vice-chairman or other member of the appeals tribunal resigns or the term of office expires, the person may carry out and complete any duties or responsibilities that the person would have had if the person had not resigned or the person's term had not expired in respect of any application, proceeding or matter in which the person participated."

Mr. Laughren: That is a very strange kind of thing. Is it normal for people in these kinds of positions? Does that mean they finish off what they were already involved in? Is that what it means?

Mr. Revell: The situation could arise where a member of the appeals tribunal has sat on a hearing but a decision has not yet been rendered at the end of his term of office. This section allows him to take part in the rendering of that decision.

Mr. Laughren: It is sure a complicated way of putting it, is it not?

Mr. Lupusella: I think we also should mention that the decision must be delivered in a reasonable period of time. Am I correct or is the time frame touched upon?

Mr. Cain: I do not recall if there is a time limit but, if there is, it is later on. It does talk of them providing a decision and rendering it to the parties, and so forth.

Mr. Lupusella: Considering the content of this provision, if there is no other provision dealing with the time frame when the decision must be rendered, can we make sure we are going to include a specific subsection dealing with the time frame of the decision that must be rendered, in subsection 86e(4), which will be a new subsection?

Cases might last six or seven months and then the appointment of that person will expire and the person may be involved with 100 cases, which means he has to be involved for another six or seven months until the decisions will be rendered. I would like to see clear guidelines spelled out within this act that the decision must be rendered as soon as possible.

11 a.m.

Mr. Cain: I am sorry. On page 26, under subsection 86l(2), it states, "Every decision of the appeals tribunal and the reasons therefor shall be communicated promptly in writing to the board and the parties of record."

Mr. Lupusella: What does "promptly" mean?

Mr. Cain: I suppose the problem there is defining how quickly a decision could be made, depending on how quickly the evidence can be obtained.

Mr. Laughren: You have to be careful on that one because you might want to get more evidence from someone.

Mr. Cain: That is correct, so it difficult to define a time.

Mr. Kennedy: Could I get in a question here? It seems to me the word "may" is the operative one; it may or may not. It implies somebody has to make a decision. Who would replace him? Supposing it is a six-month issue and he finds in three months he cannot continue. Under what authority does the replacement come from?

Hon. Mr. Ramsay: I cannot answer that. It is a good question.

Mr. Kennedy: When somebody resigns, who replaces him?

Mr. W. R. Riddell: I am assuming that if someone resigns, he will be replaced by reason of some new person being appointed. However, if the question really is what would happen to that appeal, but for the section, if you have to have three persons--"The decision of the majority of a panel consisting of three persons is the decision of the appeals tribunal"--it would be my view that you could not have a decision if one member resigned, his term expired or whatever, then you would have to have a new hearing.

Mr. Lupusella: A new hearing?

Mr. Kennedy: We do not want that.

Mr. W. R. Riddell: If my reasoning is correct that you have to have a decision of the majority of the panel of three persons for there to be a decision, then if one person resigns or his term expires, you have only two persons and it would be my view that section 86e would therefore say you cannot have a decision on that case. If that is so, then presumably there would have to be a new hearing if there were ever to be a decision on that case.

Mr. Kennedy: It would be very unfair to the worker to delay the decision in that way.

Mr. Laughren: Not if it is an adverse decision.

Mr. Kennedy: Are there only these three individuals? Is there not a pool--

Hon. Mr. Ramsay: Yes, there is a pool.

Mr. Kennedy: --where you can bring in a third panellist?

Mr. Revell: No. The administrative law principle, I am firmly convinced, is that once a tribunal undertakes a hearing, if one of the members resigns or leaves, you cannot bring somebody in who is going to hear one half or one third of the evidence and have him involved in the decision. In fact, the members of the committee cannot get up and go out and have a cigarette and come back; they have to sit there and listen to all the evidence.

If it is the case that the members of this committee feel there should be a mitigating circumstance where a member resigns or dies in office and he has heard half the evidence or maybe even all the evidence, but the panel has not rendered a decision, something may be permitted so that two members can render a decision. I think we need something. I do think the words we struck out of subsection 86e(3) are particularly helpful in the circumstance. I think we would need another subsection that specifically deals with the situation where a hearing will be aborted by not having the sufficient number of members on the panel.

Mr. Riddell: I suppose that is the reason subsection 3 is written as it is. If there is no majority, the decision of the chairman of the panel governs. If one member happens to die prior to the time a decision is made, obviously there is no majority. In this case, would the chairman of the panel govern?

Mr. Revell: I think that may have been the intention, but I do not think it would have accomplished its purpose.

Mr. W. R. Riddell: Especially if it were the chairman who died.

Mr. Kennedy: You see, in section 86f, then, where that word "may" is, it would need to read "must" carry out and complete the case or else there will be a new hearing. That is about what you are saying.

Mr. Lupusella: I foresee another problem. In the case where a member of the tribunal dies, that is not foreseen. But in the case where a person's term is supposed to expire or he resigns--even a case where a person resigns cannot be foreseen by the board--but if his term expires, I am sure the board will not appoint such a person to hear a case. So the things we will have to consider eventually are the case of death or the case in which a person resigns for whatever reason. Those are two provisions that must be considered, really.

Mr. Revell: I think it is wider than that, Mr. Lupusella, because even in the situation where we know the end of the member's term is coming and the chairman says, "I will not appoint him to hear any more cases," it is still possible he has been involved in a long, complicated appeal that has been going on for a year. I have no idea what the time frame is with respect to appeals.

Mr. Lupusella: It is four months now.

Mr. Revell: I assume four months is an average. There

may be one that is longer than just four months for whatever reasons. As I say, in theory there is a possibility of one being longer than four months.

Mr. Lupusella: I have a case of one year.

Mr. Revell: At the beginning the chairman does not know how long an appeal is going to last, and yet the term of office ends. There are three possibilities: resignation, expiry of term or death (inaudible) present.

Mr. Chairman: Are we happy with section 86f the way it is? Shall it carry? Carried.

Mr. Riddell: Subsection 86g(1) says: "Subject to section 86n, the appeals tribunal has exclusive jurisdiction to hear, determine and dispose of,

"(a) any matter or issue expressly conferred upon it by this act;

"(b) all appeals from decisions, orders or rulings of the board respecting the provision of health care, vocational rehabilitation or entitlement to compensation or benefits under this act; and

"(c) all appeals respecting assessments, penalties or the transfer of costs,

"and subsection 75(2) applies with necessary modifications where a matter referred to in that subsection is raised in an appeal."

Mr. Gillies: Mr. Chairman, I am just looking at clause 86g(1)(b). I assume it means appeals from decisions, etc., of the first level of administration in the board, but could it be interpreted to mean a decision of the corporate board?

Mr. Lupusella: Yes. That was my question. I do not think there is anything wrong, because I am quite happy with this provision if the interpretation of clause 86g(1)(a) gives an injured worker who deals with his or her own case an opportunity to appeal even a policy matter set up by the board. I think it is a great clause if that is the case.

Mr. Gillies: I have no great problem with it. I just think if that is indeed the interpretation that could be put on it, we had best know about it in advance.

Mr. Lupusella: I think it is just great.

11:10 a.m.

Mr. Sweeney: We are coming back to that concept that the appeals tribunal, other than in the reference earlier to section 86n, has a final decision.

Okay, I suppose in the adjudication of an individual case my

inclination would be to agree with Mr. Lupusella that in fact this is not a problem. Could the appeals tribunal, however, overturn a matter of policy set by the corporate board?...

Mr. Cain: I believe, and perhaps Mr. Hess can comment on it, that the intention as it is specified in clause 86g(1)(b) was to have the appeals tribunal hear any decision made by the board, that is the board as a total entity, respecting decisions made on health care--medical aid, as it is called at the moment--as well as any vocational rehabilitation decision or compensation decision in a claim. It was intended to deal with those adjudicative matters. That was the intent of it.

Mr. Gillies: Yes, and that is what I would have thought the intent was as well. What I am wondering is, suppose the corporate board had made a policy decision about a matter of health care. I am trying to think of what it might be that allowed a certain class of nonmedical practitioners, for instance, to be involved in health care rulings on a case. Could the tribunal overturn that as a matter of policy?

Mr. Cain: When you look at 86n, which talks about the corporate board looking at an interpretation of policy by appeals, and asking them to look at it again, I would suggest that this tells us that (b) is not intended to cover policy made by the corporate board.

Mr. Gillies: I am glad you pointed that out.

Mr. Sweeney: But all it says is to reconsider. It does not order them to change it. All 86n says is "direct the appeals tribunal to reconsider."

Mr. Cain: Right.

Mr. Sweeney: It still leaves the final decision with the appeals tribunal.

Mr. Cain: Again, I probably have to go back to Mr. Hess on this.

However, 86n begins, "Where a decision of the appeals tribunal turns upon an interpretation of the policy and general law of this act"--there is a policy or a general law of the act that has been created by the Workers' Compensation Board. When it seems that the appeals tribunal may have made a decision not within that policy, the corporate board has the right to ask them to look at their decision again.

I would think this implies that it is not intended that the appeals tribunal, under clause 86g(1)(b), look at policy, and make a decision as to whether the policy is appropriate. On the contrary, they are to look at adjudicative matters based on policy.

Mr. Sweeney: Excuse me, though. Another possible interpretation of that is that it is primarily in the area of policy interpretation and general law where the board might ask the appeals tribunal to review, as opposed to in other areas.

It does not necessarily mean, however, that the tribunal has no right to deal with matters of policy interpretation and general law. It just says that in those two areas, the board reserves to itself the right to ask the appeals tribunal to review it, not to change it. There are two entirely different interpretations there.

Mr. Hess: I really think that subsection 86n goes a long way towards satisfying me on the question that arose out of 86g, but I would have to agree with Mr. Sweeney that I am not sure 86n(1) is explicit enough.

I am not a lawyer, but I am not at all convinced that the appeals tribunal, under the direction of that subsection, could not re-examine its decision and say, "We have, at the direction of the board, looked at it again, and we are staying with the decision we made originally."

If the intention is that the corporate board can say: "This is a matter of policy. You have, in our opinion, erred, and we are directing you to arrive at a different decision"--if that is the intention of 86n, then we had better make it a bit more explicit because, as Mr. Sweeney says, that is not what it says.

Mr. Chairman: It is to be hoped Mr. Hess can clear it all up for us, Mr. Lupusella.

Mr. Hess: I take it that I should address myself to 86n. If a court were sitting, and it reversed some general principle of law applied by a trial court, it would return the matter to the trial court and ask it to deal with it in the light of the declaration of law that the appellate court had made, and I think this is probably where this language is adapted from.

If you look at it, it says, "Where a decision of the appeals tribunal turns upon an interpretation of the policy and general law of this act, the board of directors of the board may, in its discretion, stay the enforcement or execution of the order of the appeals tribunal." In other words, they can stay it, and then it would have no operative effect at all. Then they can review the matter and determine the issue of interpretation and direct the appeals tribunal to reconsider the matter in the light of the determination of the board.

In other words, they would return the matter to the appeals tribunal, ask it to deal with the matter in the light of the determination of the board of directors as to what the policy is or the general law of the statute is. I would suggest that the appeals tribunal, being re-seized of the matter--if it were performing its functions in accordance with the statute, and I make that as a basic assumption--would then come to a decision based upon what the board of directors had said was the way in which the matter should be approached on a point of principle or policy.

Mr. Gillies: I accept all that you have said. Do you not agree with me, though, that the possibility exists for a deadlock?

Mr. Hess: Given a tripartite appellate tribunal or

appeals tribunal, and also given somewhat of a tripartite board of directors, there are undoubtedly going to be dissents from whatever action is taken by one group or the other, and there could be a deadlock where the appeals tribunal might argue, no, what the board has done is not a matter of policy or general law, for example. They could take that position and say that the board had no right to stay and interfere.

I suppose that might ultimately be thrashed out in a court, and that is probably where the matter would have to be thrashed out, without the Legislature trying to deal with every conceivable situation that might possibly arise. You can only give a general direction, I submit, in this kind of a matter. There could be a deadlock, I concede that, given the worst possible scenario.

Mr. Sweeney: Mr. Hess, would it be your interpretation that the power to stay the enforcement and execution does, in effect, give the board the last say? Because until they release that power--

Mr. Hess: It does not give it the last say.

Mr. Sweeney: It does not give it the decision.

Mr. Hess: It does give it this. It says the appeals tribunal decision cannot be carried into effect. "We will not pay the money," or "We will not do this," or "We will not do that." Obviously, some common sense must prevail. Something or someone has to give, and there will probably be some sort of a common meeting place.

Mr. Sweeney: But as I read it, there is no time limitation on the stay of enforcement.

Mr. Hess: No, there is not.

Mr. Sweeney: Consequently, if the board really gets its back up and says, "We are going to put this stay of enforcement in effect now, and it is blooming well going to stay there until you change your mind," then it stays.

Mr. Hess: That may be. You are raising a problem that may be--

Mr. Sweeney: I am really asking if I am understanding. Is that what it means?

Mr. Hess: Is there a provision for interim compensation, or anything like that, pending a final decision, Mr. Cain?

Mr. Cain: No. If the compensation board has made a decision that has awarded benefits, for example, and during the awarding of the benefits--in this case it would be the employer who might appeal--those benefits will continue to be paid until that appeal is heard and until a decision is reached by the appeals tribunal, so that does not stop benefits already awarded. Of course, if the board had rejected or denied something, then to

the degree that this allows the board to stay the decision, that decision would be stayed.

11:20 a.m.

Mr. Sweeney: I am just wondering if it is not time to cut bait and make a decision as to who is going to have the final say.

Mr. Lupusella: The appeals tribunal.

Mr. Sweeney: Do we want the board to have the final say, as it now has? Not the final say on decision-making, I recognize that. Do we want the tribunal to have the final decision, or do we feel there is a need for this balance here, that we do not want to give either one of them full and final authority?

It is not a good analogy, but I am trying to think of something like the relationship between the House of Commons and the Senate that, in effect, the Senate can hold up legislation and can send it back for review but, in the final analysis, if the House of Commons wants to pass it, it is blooming well going to pass; it cannot be stopped.

I am reaching for the thought here that maybe as legislators we basically have three options. We can leave the tenuous balance that is in here now by giving neither one of them full and final authority, or we can lean in one direction or the other in terms of final authority. As it is, as the member for Brantford (Mr. Gillies) has aptly pointed out, we have left the potential for deadlock. Maybe that is the best way, I do not know.

Mr. Gillies: I have one other question arising out of what you just said, Mr. Hess, that the matter could end up in a court. Could you explain to a poor nonlawyer how it is likely to get there?

The injured worker perceives that he or she is being denied justice because of the deadlock situation and puts the matter before county court or Court of Appeal. What would likely happen in a situation like that?

Mr. Hess: I would imagine it would be the claimant. Let us assume it is a denial, it is the claimant who has so far been frustrated. I could see where he could apply to the court under the Judicial Review Procedure Act for a declaratory order.

Suppose the board had said no, and the appeals tribunal said yes to the claimant--I guess one has to get into some detail--then the board said: "No, that is a matter of interpretation of policy. We will stay that and you will review it." Then the appeals tribunal refuses to accede to that.

I imagine that it would come up by way of judicial review with an application for a declaratory order from the court that the order of the appeals tribunal should be declared to be the valid one and be effective. Then it would be a matter of the court

thrashing its way through this section, as we have been doing for a little while now, and seeing with whom the ultimate decision-making power lies.

Mr. Sweeney: There is one possible way we might want to get out of this.

Mr. Hess: May I just finish? I do think that the ultimate power of decision with respect to policy and general law is clearly vested, however, in the board of directors of the board under this. I understand your problem is where the appeals tribunal refuses to accept that position.

Mr. Sweeney: Yes.

Mr. Hess: That is how I conceive a stalemate arising. It is only when the appeals tribunal refuses to accept the determination of the board of directors. I guess one way of doing that is to fire, or get rid of, the people on the appeals tribunal who refuse to comply with the wording of the statute.

Mr. Gillies: There is another possibility that we might just consider. I gather it is the position of the Association of Injured Workers Groups. Subsection 86n(2) indicates that, presumably in a deadlock, the corporate board would be obliged to hold a hearing and give reasons for overturning the tribunal, but the buck stops with it.

Mr. Lupusella: Where is the independence of the appeals tribunal? You are trying to reduce the power of the appeals tribunal to be independent. If they really believe in the independence principle of the appeals tribunal, such independence should be maintained. I am not a lawyer but I think you had an opportunity to review such principles within the content of such a bill.

The appeals tribunal, under clause 86g(1)(a) has the power "to hear, determine and dispose of...any matter," which includes policies of the board, as I understand it, unless I am wrong.

Mr. Gillies: No, Tony, it says "any matter or issue."

Mr. Lupusella: It says: "or issue expressly conferred"--

Mr. Gillies: --"expressly conferred upon it by this act."

Mr. Lupusella: --"by this act." Okay.

If you want to maintain the principle of independence of the appeals tribunal, and then you tell them that they are to state their positions based on the policy matters which have been set up by the corporate board, then, my friend, you are killing the principle of independence of such an appeals tribunal. As far as I am concerned, I see the appeals tribunal panel as the Supreme Court, which can overrule decisions taken at the lower level. That is how I see it.

To give you an example, the case which I brought to your

attention yesterday about the commutation, the individual lost his appeal as a result of a policy set up by the board. Are policies law? No, as far as I am concerned. They are decisions taken by the corporate board on interpreting the present law.

If you want to change the direction of the appeals tribunal, I think clause (a) is a wonderful clause which should be maintained as it is, hoping that it has the power to review the policies of the board on the interpretation of "hear, determine and dispose of any matter or issue expressly conferred upon it by this act," which includes the corporate board as well. That is my position. That is how I would like to see it.

Mr. Sweeney: The problem is not with section 86g, Tony. The problem is with section 86n, which we have not come to yet. We can leave 86g exactly the way it is and have the understanding that you have just given, but when we come to 86n we run up against another roadblock.

Mr. Lupusella: Then we will eventually change the other one. I would like to ask legal counsel if, under clause (a), "any matter" includes policies set up by the board as well. It is not a law, it is an interpretation of the law. The interpretation of the law set up by the corporate board might be wrong, as it was in the case I described yesterday.

Tell me which section of the present act states that an individual must face closure of his house in order to get commutation. Which section of the act has that policy?

In my opinion, the decision of the board was completely wrong, but they followed the guidelines of the policy set up by the corporate board. Am I correct? If we want to follow the principle of the present guidelines, that the appeals tribunal has to follow the guidelines and policies set up by the board, I think it is completely wrong, because they do not then have any independence whatsoever.

Mr. Revell: I agree with Mr. Sweeney that if there is a problem you want resolved, it may be in section 86n. Clause 86g(1)(a) is a very restrictive provision, the way I read it: "any matter or issue expressly conferred upon it"--i.e., conferred upon the appeals tribunal. The power of the tribunal when it comes to appeals is set out in clauses (b) and (c).

There are some matters conferred on the tribunal itself. This is the one that is giving it an exclusive jurisdiction. For example, it has the power to set its own rules of procedure.

Mr. Hess: Section 15 of the act as well, Mr. Revell.

Mr. Revell: Section 15, yes. Sorry, I forgot about section 15. That is on page 7 of the bill. That is a matter exclusively conferred upon the appeals tribunal.

11:30 a.m.

Mr. Gillies: I do not want to draw this out unduly, Mr. Chairman. I just have a concern. If we were talking about individual cases, then the argument made by Mr. Lupusella--that in a sense the tribunal is a court and is interpreting matters and making a decision in a particular case that should be binding--does not bother me very much at all.

But I think this section--and I am talking about section 86n, not section 86g--could be interpreted right up to the very point of who is running the board. I am just trying to find in the existing act--maybe somebody can help me out here--where the powers and obligations of the corporate board are laid out. I can see on a matter of policy a possible conflict between the corporate board and--

Mr. Hess: Section 75.

Mr. Gillies: Section 75? Thanks, Paul. Okay. In the existing act, subsection 75(1) says: "The board has exclusive jurisdiction to examine into, hear and determine all matters and questions arising under this part and as to any matter or thing in respect of which any power, authority or discretion is conferred upon the board, and the action or decision of the board thereon is final and conclusive" etc.

That is in this act, and while I have no great quarrel with my friend on this matter, we have a section here saying that the board's decisions are final and conclusive as well as a possible interpretation by at least one member of the committee and possibly more that in fact it is not, that a decision by the tribunal could override a decision by the board. I would suggest that we should take a good look at that.

Hon. Mr. Ramsay: I was going to suggest that we will take a good look at it, and why do we not stand that one down and deal with the other ones?

Mr. Sweeney: We are going to need a week for stood-downs.

Mr. Chairman: That is something else we will have to discuss.

Mr. Sweeney: To get them to stand up again.

Mr. Chairman: Section 86n seems to be where the problem is; when we get to section 86n, we will stand it down, if that is agreeable.

Mr. Sweeney: It is a key issue.

Mr. Lupusella: I hope the minister will consider my concern that if a policy is set up by the board that affects an individual case, the individual should have an opportunity by appealing to the appeals tribunal to deal even with policy matters affecting his or her own case.

Hon. Mr. Ramsay: Yes.

Mr. Sweeney: Mr. Chairman, going back again, the problem we are dealing with is not with section 86g; it is with section 86n. I think we can proceed with section 86g. I do not see any reason not to, unless someone can draw something to my attention that I am not seeing here.

Mr. Chairman: There seems to be a consensus. Is subsection 86g(1) carried? Carried.

Mr. Riddell: Subsection 86g(2) says, "The appeals tribunal shall not hear, determine or dispose of an appeal from a decision, order or ruling of the board unless the procedures established by the board for consideration of issues respecting the matters mentioned in clause (1)(b) or (c) have been exhausted, and the board has made a final decision, order or ruling thereon."

Mr. Chairman: Shall that carry?

Mr. Lupusella: Are we talking about the appeal board hearing before the appeals tribunal hearing, or what?

Mr. Gillies: Yes, that is what I think.

Mr. Chairman: It is an appeal board hearing. That is all there is.

Mr. Sweeney: In other words, this subsection provides the board with the opportunity to go through all the various appeal mechanisms itself, and only at that point does the appeal tribunal trigger in. The board simply says: "That is as far as we can go. We have made a decision. There are no more steps internally within the board." Is that what it means? That is my interpretation of "have been exhausted."

Mr. Chairman: Everybody seems to be shaking his head up and down, "yes."

Mr. Sweeney: Okay. So the appeals tribunal triggers in as the absolutely final appeal stage, except for that other question we still have to deal with.

Mr. Revell: Yes.

Mr. Gillies: As long as the other jurisdiction question is solved, I have no problem with this.

Mr. Sweeney: Excuse me. Just to help me one step further, Mr. Cain, in the present normal run of events you have a claims adjudication, you have the claims review, you have an adjudicator--

Mr. Cain: Appeals adjudicator.

Mr. Sweeney: An appeals adjudicator. Then normally, if there is another step, we go to that three-panel thing.

Mr. Cain: That is right.

Mr. Sweeney: Now that is going to disappear.

Mr. Cain: The three-panel appeal will disappear from the Workers' Compensation Board, to be taken up by this tribunal.

Mr. Sweeney: So the appeals adjudicator under the present system would become the final step within the board itself.

Mr. Cain: That is correct. It will be the final step.

Mr. Sweeney: As far as you know, is there anything in this act that I have not seen that adds any other steps we do not now have?

Mr. Cain: It is not intended to, and as far as I am aware, there is nothing in here that suggests any step beyond the appeals adjudicator.

Mr. Sweeney: All right.

Mr. Lupusella: I think the question raised by John cleared up a concern I had. Actually, this subsection states that the decisions made at the appeal board hearings and so on cannot be appealed before an appeals tribunal unless the case is completely new. Am I correct or am I wrong? That is how I read this subsection.

In other words, if a decision has been appealed at a board hearing within the present structure of the act and the decision has been rendered, the new appeals tribunal cannot hear the case. That is how I read it. Am I correct or wrong? I am missing something.

Mr. Revell: You are talking about an old-system claim.

Mr. Chairman: One that has been through all the steps.

Mr. Revell: I believe section 86o deals with the issue you are raising, Mr. Lupusella.

Mr. Lupusella: Then I do not understand this subsection 86g(2), I really do not. "The appeals tribunal shall not hear, determine or dispose of an appeal from a decision, order or ruling of the board." Are we talking about board hearings or the corporate board? What is it? I really do not understand.

Mr. Revell: The issue of when the board makes a decision has been difficult throughout the whole proceeding. As you will recall, there was an amendment agreed to yesterday that clarified the power of the board of directors to delegate the functions of the board. It is obvious that decisions on the awarding of compensation cannot be made on a daily basis at the board of directors level. In my opinion, a "decision of the board" means a decision of the person to whom the power of making decisions has been delegated.

Mr. Lupusella: Are we saying on subsection 86g(2) that policy matters cannot be reviewed by the appeals tribunal unless

the minister comes out with an explanation? The sense of "the board" is so vague here. We are talking about the appeal system, but at the same time there is the picture in my mind of board hearings, because we are dealing with the new appeals tribunal panel. I am a little confused about the word "board" and its meaning.

Mr. Cain: In the sense you are describing it, that refers to the Workers' Compensation Board as opposed to the appeals tribunal. The Workers' Compensation Board has to make a final decision before it can go on to the appeals tribunal.

Mr. Lupusella: It does not say that.

Mr. Cain: That is what it is intended to say and that is the way the lawyers explained it.

Mr. Lupusella: Let us be clear about what we are saying. We talk here about "ruling of the board." Do we have a definition of "the board"? Are we talking about the corporate board?

Mr. Cain: We are talking about the corporate board and, as Mr. Revell said, its right to delegate its authority for decision-making. Obviously the board cannot look at all the claims in a year. That delegated authority says at some point that is the final decision of the board, and now it can be appealed to the appeals tribunal.

Mr. Lupusella: Perhaps some other people will help me understand. I am more confused than before.

11:40 a.m.

Mr. Sweeney: I have one other question that might deal slightly with it. I asked Mr. Cain earlier whether the present system of having the appeals adjudicator as the final step before the panel is in there now and will continue to be in there. It has been brought to my attention, and I have not been able to check it yet, that there is no specific reference to an appeals adjudicator in the act; that is an internal procedural operation the board has set up itself.

Mr. Cain: That is true.

Mr. Sweeney: That would seem to continue to allow the board to set up several other mechanisms, if it so chooses. I have no reason to believe that it is going to, but if the present series of steps we discussed are a result of the board's internal procedures, as opposed to legislation, that would certainly mean the board could set up five or six more steps, if it wanted to. Whether that is advisable for it to do so is another matter.

Mr. Cain: That is true. However, if one tries to put into legislation that the appeals tribunal is the last level, and if somewhere, as time goes on, we find that this is an ineffective way to handle claims--perhaps there are delays or administrative problems, and this is what I am thinking of--one should change the system within the board. Then we would have to come back to the

Legislature to get an administrative change in organizational structure.

Mr. Sweeney: Right.

Mr. Cain: I do not know. Perhaps that is the way it ought to be, but from an administrator's point of view, that is a bit cumbersome, if not absolutely essential.

Mr. Sweeney: My main concern is the time lines we have experienced in the past.

Mr. Cain: I see your point. I know what you mean.

Mr. Sweeney: I am wondering if what we are doing now could lead to even more difficult time lines. As you well know, I have several cases on my docket--and I am sure you are even more familiar with them--in which we are looking at three and four months down the road. In some cases, depending upon where the situation is in the province, it could be, from our hearings in Sudbury, almost a year.

Mr. Cain: Again, I can only comment from an administrative point of view. I could not imagine the board ever wanting, for any reason, to extend the line more than is absolutely necessary. All it does is to bring complaint down on the board, and it is not accomplishing anything.

It would take a very perverse attitude to say, "I think appeals will allow this; so I will just not let it get there." You would have to have a very perverse attitude. It seems to me, from an administrative point of view, that, on the contrary, we would be saying: "Let us move them to appeals. Let us get the show on the road and get it dealt with."

I may be wrong. That is purely an administrative approach to this.

Mr. Laughren: If Mr. Alexander were here, we would not be in this bind.

Mr. Lupusella: What was the intention of this section, unless the board helped you to write subsection 86g(2)?

Mr. Revell: I have tried to explain this, Mr. Lupusella. I believe the section reflects the intention of the board and of the ministry. It is clear in my mind that the appeals tribunal is restricted from holding a hearing until the internal procedures of the board have been exhausted. I do not know what I can add to that.

It would be a policy consideration as to whether that is the desirable approach to take. However, what Mr. Cain has said, and what I see in subsection 2, are one and the same thing. I think Mr. Cain is right, that they could set up--world without end, there could be appeal procedures laid down.

Mr. Sweeney: Internally.

Mr. Revell: Internally. There is no question in my mind. That is right. You apply for workers' compensation. The first level of appeal--you know, it goes from a clerk to a second clerk, to a third clerk, to the supervisor of clerks, to the supervisor of supervisors. You could do that world without end. That is the theory.

Mr. Lupusella: Intent.

Mr. Revell: I have a feeling that this is not the intention of the board.

Mr. Lupusella: Okay. Are you telling us that the injured workers who have been exhausting the present appeal procedure--the procedure covered under the present act, and not the new act--can appeal a decision, after exhausting all the procedures of the present appeal system, to the appeals tribunal as well?

Mr. Revell: Not as a right, but it is my understanding from section 860, Mr. Lupusella, that where there has been an appeals decision previously made, with the leave of the appeals tribunal, it can be heard by an appeals tribunal.

Mr. Chairman: Mr. Hess, did you have a point to make?

Mr. Hess: Yes. There is another element in subsection 7 that I might call the committee members' attention to, and this is sometimes a problem that has arisen in courts, particularly when one is dealing with tribunals created by statute.

As a hearing or investigation proceeds, decisions are made on various issues that arise from day to day and time to time. The question has always arisen: Does one appeal all those little interim decisions that are made along the way, or does one wait until there is a final decision? Does one prejudice one's position by waiting until there is a final decision, which finally disposes of the issue, and appealing that only?

This is an issue that has always caused a problem, and I think subsection 2 is an attempt to deal with that. In other words, suppose you had a claimant and there was, first of all, an issue as to whether it arose out of the course of employment, what were the average net earnings--there may be five or six issues all wrapped up in one claim. Instead of appealing as a decision is made on each one of those as it comes up and having six or seven appeals before an appeals tribunal arising out of one claim, you get it all heard and determined on the one and then you appeal that and the whole thing becomes a matter for the appeals tribunal. I think that is another thing subsection 2 is addressed to.

Mr. Sweeney: I still have two concerns with subsection 2 that Mr. Cain has indicated are possible, although not likely, and I tend to agree with him. Nevertheless, we are trying to set up in legislation the phraseology in such a way that the possible does not take place; we do not think it should.

The two concerns are that there is nothing in legislation that requires the boards to do certain kinds of things--to have an

appeals adjudicator or whatever the case may be. The second concern is that there is nothing in legislation to prevent the board from dragging something out interminably.

There are two issues I would like the committee to take a look at. The first one is that somewhere in subsection 2, if we are going to say that the board has to make a final decision before the appeal tribunal can trigger in--that is what it says--then it seems to me there should be a reference here to the board being required to have a hearing somewhere along the way before it makes that final decision. In other words, it cannot do it all by itself, quietly and privately or whatever the case may be.

That could very well simply mean that we maintain the existing practice of having an appeals adjudicator, because that is a hearing. But there is no requirement that this be done. Given the fact that we are now instituting a significantly new operation within the board--the appeals tribunal, which is for all practical purposes independent from it--it seems to me that we need now to build in a legislative guarantee that somewhere along the way, before that final decision is made, a hearing is held. Perhaps that is covered some place else; I do not know.

Hon. Mr. Ramsay: It is covered in section 80 of the existing act: "Any decision of the board shall be upon the real merits and justice of the case and it is not bound to follow strict legal precedent but shall give full opportunity for a hearing."

Mr. Lupusella: Which means you cannot appeal policy matters at all, because there is no merit in the appeal.

Mr. Sweeney: Is the minister saying that section 80 would limit subsection 86g(2); that before the board could make a final decision, subsection 80(1) would have to trigger in and 80(1) requires a hearing?

Hon. Mr. Ramsay: Full opportunity for a hearing.

Mr. Sweeney: Is that your interpretation?

Hon. Mr. Ramsay: Yes.

Mr. Cain: That is the way it is utilized today.

11:50 a.m.

Mr. Sweeney: All right. My second concern is the time-line factor. Can anyone think of a way--and I am putting it that way deliberately, because I cannot--to avoid having decisions dragged out interminably when it says the appeals tribunal may not trigger in until the board has made a final decision?

It could take a long, long time before the board chooses to make a final decision, for whatever reasons. It may just be overworked, and not have enough people; it may just be dragging the thing on, as has been suggested, appeal after appeal; it may

just not deal with the case. Somewhere along the line, we should be able to make a requirement that this cannot happen, that the whole sense of speedy justice be applied.

I am fully cognizant of the danger of putting a strict time line in. It has already been drawn to our attention that it could be to the disadvantage of the injured worker if we force them to do it too quickly. Somehow, some way--

Hon. Mr. Ramsay: I am just thinking out loud, Mr. Sweeney. Again, to go back to the new corporate board which has representation from the parties concerned, if there is representation made to them about undue delays and so on, it is their responsibility to administer the activities of the board properly.

Mr. Sweeney: That has been a complaint for a long time.

Hon. Mr. Ramsay: Yes, but we have a different makeup on the board now. That is the point I am making. The board would have representation from injured workers' groups, or representatives of the injured workers.

Mr. Lupusella: Are you suggesting the new corporate board would have the power to review all the past and present policies set up by the old corporate board?

Hon. Mr. Ramsay: I would certainly think they would, yes. Absolutely.

Mr. Sweeney: Numerically, they are not going to have the ability to make a change if the rest of the board decides it does not want that change.

Mr. Lupusella: Right. We might be faced with the same--

Mr. Sweeney: We could be talking about a considerable increase in costs. You simply have to have more people to do the job. You have to have more regional offices so that you can get at the files more quickly instead of having them travel through 21 floors at 2 Bloor Street East.

Mr. Laughren: Hear, hear.

Mr. Sweeney: I do not get the impression there is any deliberate attempt to create these delays, but they are there. When we now have a new situation whereby a worker or an employer, either case, can get to a final, independent appeal system, but they cannot do it until the board makes a final decision on its internal operation decision making, then justice could really be delayed.

Hon. Mr. Ramsay: I hear what you are saying, and I understand completely what you are saying. You cannot put forward a suggestion for--

Mr. Sweeney: I can say that the final decision of the board must take place within six months, four months or three

months, and I know what the problems inherent in that are. It is easy to say.

Hon. Mr. Ramsay: Yes, that is what I mean.

Mr. Lupusella: Mr. Chairman, if I may, because in subsection 86g(2) we are talking about exhausting the procedure of the appeals system before getting into matters which can be appealed before the appeals tribunal--perhaps the legal counsel can assist us.

Can we replace the word "board" with something which gives a clearer mandate, an indication that we are talking about the appeals procedure, instead of using the vague word "board," which brings to my mind the corporate board and so on?

Mr. Cain: I just want to say that it is really referring to two institutions, in a sense. From a layman's point of view, that is what it is, the Workers' Compensation Board and the appeals tribunal. They are two different entities, if you will. I am trying to get that point across.

Mr. Lupusella: But they are included in the word "board."

Mr. Cain: No, only one of them is. The other one is the appeals tribunal itself, and the board is the Workers' Compensation Board.

Mr. Lupusella: I understand, but I can see the two different identities of the appeals tribunal, which is a completely separate entity. The word "board" bothers me. In fact, we are talking about appeals procedures that have been exhausted before appeal before the appeals tribunal and we are using the word "board."

Mr. Revell: But those are the procedures. To me it means the procedures established by the board for its internal review mechanism, and I cannot think of another expression that more clearly conveys who is establishing these unless you--

Mr. Lupusella: Okay, I can give you another idea. What will be the final stage of the appeal system before an individual will appeal to the appeals tribunal?

Mr. Cain: It is the appeals adjudicator and it will continue to be. But, as we have already said, section 80 of the act will say that the board has to hold a hearing.

Mr. Lupusella: With that word "board," are you talking about the present board hearing--

Mr. Cain: The Workers' Compensation Board has to hold a hearing according to section 80 of the new bill as well. That is what it says today and that is what it will say in the new bill.

If you are concerned about the word "board" because you see some appeals process at the board that you want included, goodness, one might change the word from "appeals tribunal" to

"review tribunal." The word is, in a sense, meaningless to the degree that we are referring to a process created by the Workers' Compensation Board that will cause a hearing to occur before it can move across to the appeals tribunal.

Mr. Lupusella: Let us talk in practical terms about what is in existence within the framework of the present act. We have the claims review branch now. When the decision is denied, you appear before an adjudicator. If the decision is denied, you go before a board hearing.

Mr. Cain: That is right.

Mr. Lupusella: Okay. Of the three levels in the present system, which one will be maintained before appealing before an appeals tribunal?

Mr. Cain: The appeal board that you are talking about will disappear.

Mr. Lupusella: Appeals. We are talking about appeals. The claims review branch, adjudicator and the board's hearing. Which one will be maintained?

Mr. Cain: Review branch and appeals adjudicator will be maintained, but the most important one that you are referring to is the appeals adjudicator, being that level of hearing and the last level of decision-making of the board at which point a decision--

Mr. Lupusella: Which board? That is what I do not understand.

Mr. Chairman: The Workers' Compensation Board.

Mr. Cain: Only the compensation board I am talking about. If I refer to "appeals tribunal" I am talking about the other entity that is created in Bill 101. When I talk about "Workers' Compensation Board" or "board" it is just the board.

Mr. Chairman: Not the board of directors; the whole thing over there at Bloor Street.

Mr. Lupusella: Maybe I misunderstand. Within the present act we are talking about three levels in the appeal system. Before getting into the new entity of the appeals tribunal, of the three, which one will be maintained before appealing to an appeals tribunal?

Mr. Chairman: I think Mr. Cain already answered that. The one that will go is the appeals board, the board level. It will be replaced by the appeals tribunal.

Mr. Lupusella: It is so clear in my mind.

Mr. Cain: The appeal panel will leave the board and become the appeals tribunal, in essence. The appeal panel, when you appear before three people, goes.

Mr. Lupusella: So you are saying the claims review branch will be maintained.

Mr. Cain: That is right.

Mr. Lupusella: The appeals adjudicator will be maintained.

Mr. Cain: Correct.

Mr. Lupusella: Then the appeals tribunal will take hold.

Mr. Cain: That is right.

Mr. Lupusella: My goodness!

Mr. Chairman: I think Hansard will show that that was already explained.

Mr. Lupusella: Can we replace the word "board" with "a decision rendered by the appeals adjudicator," which will solve my problems?

Mr. Cain: Appeals adjudicator is a responsibility delegated by the board.

Mr. Lupusella: You see, you are talking about apples and potatoes at the same time, and that is what I do not want to see.

Mr. Cain: No, it is the board that is making the decision through a delegated authority.

Mr. Riddell: Surely there can be no confusion about what "board" means if you go back to the definitions section. It states very clearly that "board" means the Workers' Compensation Board. I do not understand the argument Mr. Lupusella is trying to make. Any time you see "board" in this bloody bill it has to mean the Workers' Compensation Board.

Mr. Chairman: That is right. Not from a lumberyard or anything else.

12 noon

Mr. Laughren: Well, 99.9 per cent of the time I am on the same wavelength as my friend. However--

Mr. Chairman: However, I am going to ask a question here. Shall subsection 86g(2) carry?

Mr. Lupusella: No, I would like to see an amendment that "board" will be replaced with "adjudicator's hearing."

Mr. Chairman: Shall the amendment carry? Those in favour of the amendment so signify. Those opposed? The amendment is defeated.

Mr. Chairman: Shall subsection 86g(2) carry as printed?
Carried.

Mr. Riddell: Subsection 86g(3) reads, "The appeals tribunal may make any order or direction that may be made by the board and the order or direction of the appeals tribunal or a panel thereof is final and conclusive and not open to question or review in any court upon any grounds and no proceedings by or before the appeals tribunal or a panel thereof shall be restrained by injunction, prohibition or other process or proceeding in any court or be removable by application for judicial review, or otherwise, into any court."

Mr. Laughren: Do you think they will have enough independence?

Mr. Sweeney: What about the point Mr. Hess made earlier about a deadlock between the board and the appeals tribunal? Does this not say it just is not going to go to court? That sounds pretty strict to me.

Mr. Hess: You know how the courts have always interpreted these privative clauses as narrowly as they possibly can. Privative clauses, generally speaking, enable a tribunal to make a reasonable error but the courts have never allowed a tribunal to usurp a jurisdiction it does not possess, even with a privative clause.

I do not think my comments would be affected if the appeals tribunal tried to usurp a power under a statute that it did not have or, by the same token, the board. I do not think the courts would permit it and I do not think this clause would exclude the court's intervention from something of that nature.

This, by the way, is pretty well the same power that is given to the board in making its decisions as well. Certainly, if the board has that kind of a privative clause, I think equally it be just as important that the appeals tribunal have the same type of privative clause.

Mr. Sweeney: If I follow you, what would happen is that someone, somehow, would make an appeal to the court, and the court would look at subsection 3 and say, "In this particular case subsection 3 does not apply and this court will, therefore, intervene."

Mr. Hess: Yes, because what they were doing was completely outside what the act permitted them to do.

Mr. Sweeney: The court does have that power?

Mr. Hess: Yes, it has the underlying complete power in that regard.

Mr. Chairman: Mr. Laughren, you had a point?

Mr. Laughren: I just want to welcome back my colleague the member for Dovercourt (Mr. Lupusella).

May I assume that this has nothing to do with reference to the Ombudsman?

Mr. Chairman: No, I think that has been clearly understood. The Ombudsman is still there. That is still open to any citizens of Ontario.

Shall subsection 86g(3) carry? Carried.

Mr. Riddell: Subsection 86h(1) reads, "The Lieutenant Governor in Council, after requesting and considering the views of representatives of employers, workers and physicians, shall appoint qualified medical practitioners, other than practitioners appointed under subsection 72(1) or 86b(3) to a list and the appeals tribunal may obtain the assistance of one or more of them in such way and at such time or times as it thinks fit so as to better enable it to determine any matter of fact in question or any application, appeal or proceeding."

Mr. Sweeney: So this list applies solely to the appeals tribunal? It cannot be used by anyone else. It cannot be used by the board itself, in other words; it is at the recall of the appeals tribunal.

Hon. Mr. Ramsay: Right.

Mr. Sweeney: Can I just ask a sideways question? I recall that when we were debating 86b, the question was raised--I think it was Mr. Laughren; the memory of his finely honed mind might be better than mine--that the Lieutenant Governor in Council should consult before the appointments are made. Again, I would have to check the records, but it seems there was some argument given that it was not the right way to go, and yet here, under 86h, that is precisely what is being done. What is the difference?

Under 86b, the request was made, before representatives of employers, workers, etc., were appointed, that there would be consultation. I recall that this was overruled, because it was not necessary or could not be done; there was some reason. I do not know what it was, yet here we have, under 86h(1), precisely that: "after requesting and considering the views of representatives of employers, workers and physicians, shall appoint...."

Hon. Mr. Ramsay: I do not recall saying it could not be done. I think I said it was unnecessary, in that the full intention was to have wide consultation before any of these appointments were made. What I said at this point, I cannot answer.

Mr. Sweeney: The thrust of my question, Minister, is, why in 86h and not in 86b?

Hon. Mr. Ramsay: I have not the foggiest idea.

Mr. Sweeney: Would you therefore be unwilling to reopen 86b and use the same kind of wording in 86b?

Hon. Mr. Ramsay: I have not changed my position since

yesterday. I did not think it was necessary in 86b. I do not even think it is necessary here in 86h, for that matter, but it is there.

Mr. Lupusella: It is up to you, Minister.

Mr. Laughren: We do know that consistency is a hobgoblin of small minds, so we are on safe ground.

Mr. Sweeney: If my question is leading you to think about dropping it out of 86h, I will drop my question.

Hon. Mr. Ramsay: No, it is not.

Interjection.

Mr. Sweeney: No, I do not want to take it out of 86h and we have already passed 86b, so I cannot move an amendment. It does not allow me to.

Mr. Chairman: That being the case, shall subsection 86h(1) carry? Carried.

Mr. Riddell: Subsection 86h(2): "The chairman of the appeals tribunal may fix the remuneration of a medical practitioner who provides assistance to the appeals tribunal under this section and the remuneration shall be part of the administrative expenses of the board."

Mr. Laughren: Is this a thinly disguised extra billing clause?

Mr. Chairman: What an evil mind.

Mr. Laughren: I am glad you see that as an evil, Mr. Chairman.

Mr. Lupusella: I think that Floyd makes a positive point. The practitioner should be drawn from the list of doctors who are within the Ontario health insurance plan.

Mr. Laughren: That is an idea, only doctors who are not opted out.

Mr. Lupusella: Right. Only they can be appointed.

Mr. Laughren: In the interests of economy for the board.

Mr. Gillies: Oh, I disagree. Do we not want the very best physicians, regardless of whether they are in OHIP?

Mr. Lupusella: Are you telling us that the best physicians are out of the plan, and that the patients in Ontario are receiving cheap service from people who are willing to draw the money from OHIP?

Mr. Gillies: I disagree. I want our injured workers to have access to the very best available physicians, regardless of whether they are in OHIP or not. I would hope we would all agree that--

Mr. Laughren: The best physicians are in OHIP.

12:10 p.m.

Mr. Gillies: I just would not want to make that judgement call, especially considering that for workers who live in this city, some of the very best physicians and specialists in the city are not in OHIP. I would hate to deny their services to the injured workers simply on the basis of affordability.

Mr. Laughren: I see.

Mr. Chairman: It has been drawn to my attention and the clerk and I discussed it earlier this morning that we had asked the Ontario Medical Association for submissions. If we have not heard from the association before completing this subsection we should be absolutely positive about whether it has made submissions to us. If it has, the submission has not come to us yet.

Mr. Laughren: They have not responded to our intentions, is that what you are saying?

Mr. Chairman: That is what I am saying as of now, as far as we know.

Mr. Laughren: I thought the association had already made the request. It was up to us to schedule it. Is that not true?

Clerk of the Committee: The OMA said it would like to come and asked that we leave time open for it, but as of now it have not called back to find out, or to tell us it wants to come. We received word that someone from the OMA was talking to someone else but not us--not to me or to the clerk, Mr. Arnott.

Mr. Riddell: Such arrogance. They must all be Tories.

Mr. Chairman: Perhaps the clerk should phone and check with your office to make sure nothing has come in.

Mr. Laughren: What are we saying? I am getting nervous about this.

Mr. Chairman: If we pass something now and if the association has asked for a time, then we will reconsider the item.

Mr. Gillies: Yes, Mr. Chairman, but do you not get a little ticked off as I do when an individual or group raises concerns about a bill, then does not appear before us but always seem to reserve the right to complain about it afterwards?

Mr. Chairman: The OMA knew the time frame. It was to get in touch with the clerk of the committee if it wanted to appear

before us to discuss any part of the bill.

Mr. Sweeney: We have given the OMA that option and it has chosen not to take it.

Mr. Chairman: As far as we know. It has been drawn to our attention that someone may have made contact, but it was not with the clerk's office. That is where contact was to have been made.

Mr. Lupusella: This committee has the power to subpoena the OMA and because doctors, practitioners and specialists are an integral part of the whole operation of the board, I suggest we subpoena the association to make sure it appears before this committee.

Mr. Chairman: We will check and see if it has made a submission to the clerk's office that we have not yet seen.

Mr. Laughren: We have been informed the OMA is sending a submission but does not want to appear before the committee. The question is what is in that submission. I do not know what is in it. I do not know how we can deal with it.

Mr. Chairman: That is true. It has not come to the attention of the committee. It has not come to the clerk of the committee.

Mr. Lupusella: I move to subpoena them and this committee has the authority to do so.

Mr. Laughren: That motion does not require a seconder.

Mr. Chairman: It does not require a seconder. We have a motion to subpoena the Ontario Medical Association--the whole association or just the board of directors?

Motion negatived.

Mr. Lupusella: You have such authority, but you do not want to exercise it.

Mr. Chairman: We are dealing with subsection 86h(2). Shall it carry? Carried.

Before we go further, we should clear this up this morning. We are running short of time. We have a day and a half to go. We have a number of sections we have stood down.

I understand the ministry is working frantically and should have a report before us tomorrow on the items that have been stood down. How does the committee wish to deal with the balance of the bill and the items that have been stood down? Do we want to set up a time frame?

Mr. Laughren: I thought we could finish the bill by tomorrow at 12:30, but maybe your concerns are justified. It

depends totally on how flexible the minister is on the sections that have been stood down. We all understand that.

If we are able to finish the bill because of his flexibility, then there is no problem. If, on the other hand, he is still confused about the distinction between flexibility and wishy-washiness, then all we can do is deal with the bill when the Legislature comes back after October 9.

Mr. Riddell: Unless the members of the committee have made previous commitments, is there any reason why we could not extend our sittings to Friday?

Mr. Sweeney: I have two meetings for Friday.

Mr. Chairman: We cannot come back. We cannot extend it beyond this week because we do not have the authority of the House.

Mr. Lupusella: I wonder if the minister can tell us whether or not the House will ever be called.

Mr. Laughren: He does not know.

Mr. Havrot: How many sections have been stood down?

Mr. Chairman: A lot.

Mr. Havrot: Do you have a list of them?

Mr. Chairman: Yes.

Mr. Havrot: Has the board prepared answers for most of them?

Mr. Chairman: The minister is preparing them, yes.

Mr. Havrot: The minister. How far have we gone with the preparation of the answers? The ones that have been stood down?

Hon. Mr. Ramsay: The reason Dr. Wolfson is not here this morning is that he is back at the office working with Mr. Armstrong and others. We have a cast of thousands there working feverishly to get some consensus.

Mr. Havrot: When can we expect they will be ready?

Hon. Mr. Ramsay: Tomorrow morning. It will be ready tomorrow morning, if we have to work all night.

Mr. Havrot: Let us continue with the bill.

Mr. Lupusella: Mr. Chairman, do you have any respect for the minister's statement?

Hon. Mr. Ramsay: I have not been trying to make a statement. They asked a question as to whether or not--

Mr. Sweeney: Are you telling us the cabinet has decided what--

Hon. Mr. Ramsay: --a decision has been reached. What I wanted to ask is, how would I know? I am here rather than being at the Wednesday morning cabinet meeting.

Mr. Lupusella: Wednesday morning.

Hon. Mr. Ramsay: Cabinet is meeting at this moment. It meets every Wednesday, starting at 10 o'clock.

Mr. Sweeney: The committee is prepared to recess for three minutes while you go up and check.

Hon. Mr. Ramsay: I am going up during the luncheon break.

Mr. Chairman: There are about 26 items, sections, subsections or whatever, that we have stood down, Do you want to do as much as we can today and swing into the stood-down items tomorrow morning? Fine. Please continue.

Mr. Riddell: Subsection 86h(3) reads, "A medical practitioner shall not be asked, except with the written consent of the parties of record, to assist the appeals tribunal in any application, appeal or proceeding where the practitioner,

"(a) has examined the worker whose claim is the subject matter of the application, appeal or proceeding;

"(b) has treated the worker or a member of the family of the worker,

"(c) has acted as a consultant in the treatment of the worker or as a consultant to the employer; or

"(d) is a partner of a practitioner mentioned in clause (a), (b), or (c)."

Mr. Sweeney: I think we should add, "(e) is a medical practitioner employed by the board."

12:20 p.m.

Mr. Gillies: This is covered under subsection 1. It says it cannot be a practitioner appointed under subsection 72(1) or 86b(3), which I believe effectively removes your board employees.

Mr. Sweeney: Subsection 86b(3) and subsection 72(1)--can we amend that?

Mr. Lupusella: Am I correct in my interpretation of subsection 86h(3) that the appeals tribunal, if there is consent of the parties, can call a practitioner, based on clauses 86h(3)(a), (b), (c) and (d), to appear before the appeals tribunal to give evidence about the individual case as well?

Mr. Revell: Would you repeat that?

Mr. Lupusella: I do not understand the extent of the authority of the appeals tribunal to request assistance. In the appeals tribunal proceeding, is this type of assistance given by way of written medical reports, or does the appeals tribunal also have the authority, if there is consent of the parties involved, to give evidence about medical reports which have been previously sent to the appeals tribunal?

What is the extent of this assistance? I am not clear on that in my mind.

Mr. Cain: I believe, under subsection 1, that the power is quite wide. To obtain the assistance of one or more members of the panel, in such a way and at such a time or times as the appeals tribunal sees fit--I would submit that the appeals tribunal, if it wanted to have a medical practitioner sitting there during the course of the appeal, would have the authority to do so.

Mr. Lupusella: They would have the authority. Okay.

Mr. Cain: There may possibly be a correction on that, but that is the way it was intended, as far as I recall.

Mr. Lupusella: The assistance, in my mind, was so vague that I did not know such a process existed.

Mr. Revell: The power, in regard to these medical authorities, is very wide.

Mr. Sweeney: Can I come back to my other question?

I have looked at both subsection 72(1) and subsection 86b(3). In both cases, they are talking about the Crown Employees Collective Bargaining Act, which refers to people who are officially crown employees--let me finish, and then you can tell me if I am out in left field.

It is my understanding that there are doctors employed by the board on a part-time basis who are not full-time employees of the board and who may not be considered under the Crown Employees Collective Bargaining Act. Right or wrong?

Mr. Cain: I do not know whether they are under the Crown Employees Collective Bargaining Act. You are correct; there are doctors who work part-time for the board. That is true. I do not know their designation, but I think Mr. Revell can explain it.

Mr. Revell: First of all, I think it is irrelevant whether or not they are under the Crown Employees Collective Bargaining Act. Not all crown employees are under that particular act. For example, I am not under the act. I am an excluded employee.

The relevant issue here is: are they appointed as staff by the chairman of the appeals tribunal in one instance, or the chairman of the board in the other instance? Subsection 72(1) is the staffing provision. Likewise, 86b(3) is a staffing provision.

Mr. Sweeney: So sections 72 and 86 will cover anybody appointed by either the appeals chairman or the board chairman?

Mr. Revell: Correct.

Mr. Sweeney: Technically, all people employed, either on a part-time or a full-time basis, would have to be "appointed" by one of those two?

Mr. Revell: I would think so, yes. Again, not being as familiar as Mr. Cain is with the operations of the board, I assume that they have both full-time and part-time doctors.

Mr. Sweeney: What you are telling me, then, is that the present subsection 86h(3) could not include someone who is employed by the board on any basis, part-time, full-time, or any other way.

Mr. Cain: Perhaps Mr. Riddell, the board counsel, could be precise.

Mr. Sweeney: Right or wrong?

Mr. W. R. Riddell: Right, because that is the only section there is in the act to appoint anyone. What we tried to do was have them classified as part-time, full-time, whatever--contract basis, you name it.

Mr. Sweeney: All right, I will accept that.

Mr. Revell: At the risk of reopening the issue, I am not sure how it would affect a fee-for-service type relationship between the board and a particular doctor. For example, the board may send certain types of claims to Dr. X on a regular basis. I assume he is not an employee of the board. That is strictly a fee-for-service relationship.

In that case, it would seem to me there is the possibility that he could theoretically be a subsection 3 appointee because he is not barred, as far as I can see, unless he has examined the worker or has been in one of those relationships.

On the other hand, we have to be somewhat careful about who we start putting on a list of exclusions. The idea is to be independent, but if the list of exclusions is too long, there are only so many specialists and doctors with particular qualifications in the province or in the country as a whole.

Mr. Sweeney: My concern is not to eliminate any possible doctor the board has ever used at any time for any reason, and that is what we would be getting into if we were silly about it. Rather, it is the type of medical people who are referred to as board doctors in the vernacular.

Mr. Revell: Looking at it simply, I think staff doctors are definitely caught.

Mr. Sweeney: I understand.

Mr. Chairman: Does subsection 3 carry? Carried.

It is almost 12:30 p.m. We will recess until two o'clock and see how much more we can get through this afternoon.

The committee recessed at 12:27 p.m.

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R-53

STANDING COMMITTEE ON RESOURCES DEVELOPMENT
WORKERS' COMPENSATION AMENDMENT ACT
WEDNESDAY, SEPTEMBER 12, 1984
Afternoon sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)
Gillies, P. A. (Brantford PC)
Havrot, E. M. (Timiskaming PC)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Kennedy, R. D. (Mississauga South PC)
Laughren, F. (Nickel Belt NDP)
Lupusella, A. (Dovercourt NDP)
Mancini, R. (Essex South L)
Riddell, J. K. (Huron-Middlesex L)
Sweeney, J. (Kitchener-Wilmot L)
Yakubuski, P. J. (Renfrew South PC)

Substitution:

Kolyn, A. (Lakeshore PC) for Mr. Villeneuve

Also taking part:

Gillies, P. A. (Brantford PC), Parliamentary Assistant to the
Minister of Labour
Ramsay, Hon. R. H., Minister of Labour (Sault Ste. Marie PC)

Clerk pro tem: Carrozza, F.

Staff: Revell, D., Legislative Counsel

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation
Board
Hess, P. A., Director, Legal Services Branch
Riddell, W. R., Board Solicitor and General Counsel, Workers'
Compensation Board
Muir, C., Researcher
Wolfson, Dr. A. D., Assistant Deputy Minister, Program Analysis
and Implementation

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, September 12, 1984

The committee met at 2:10 p.m. in committee room 2.

WORKERS' COMPENSATION AMENDMENT ACT
(continued)

Resuming the adjourned consideration of Bill 101, An Act to amend the Workers' Compensation Act.

On section 32:

The Acting Vice-Chairman (Mr. Havrot): When we adjourned at 12:30 p.m., we had completed subsection 86h(3) of the act, as set out in section 32 of the bill. Since Mr. Riddell has done such a great job, would he continue with subsection 86h(4)?

Mr. Riddell: Your wish is my command, sir.

"The appeals tribunal has power to authorize the chairman or a vice-chairman to inquire into applications by way of appeal under clause 86g(1)(b) to determine whether an issue involves a decision of the board upon a medical report or opinion and, if such is the case, the person making the inquiry may, before the appeal is heard by the appeals tribunal, require that the worker submit to an examination by one or more medical practitioners appointed under subsection 1 who shall report, in writing, to the appeals tribunal thereon."

Mr. Lupusella: Mr. Chairman, my only concern is about the policy-making process, even though I understand that we are dealing specifically with the medical reports and nothing else on this specific subclause. Again we are trying to limit the power of the appeals tribunal in the sense that if the policy-making process of the corporate board is affecting the individual case then the appeal tribunal will not have the power to review such practice, and I am concerned. I have the same concern as I raised before.

Mr. Cain: The intention of subsection 86h(4), as we read it, where you have these medical advisers to the appeal tribunal, is that if there is a case where, when it is directed to the appeals tribunal from the board, it becomes obvious that it centres on a medical opinion, in order not to delay the claim, the chairman or vice-chairman of the appeals tribunal, even before the panel is struck and will sit to hear the appeal, will immediately arrange for this injured worker to be examined by a physician on the list or in the group, in order that the examination and the report can be provided to the panel at the earliest possible moment. As we understand it, that is the purpose of this.

Mr. Lupusella: If this is the intent and it is not open to other interpretation, I am satisfied.

Mr. Revell: I agree with Mr. Cain's analysis of the subsection. That was the intention of it, in effect to speed up or expedite the hearing process.

Mr. Lupusella: I would not like to see, for example, the appeals tribunal, on matters related to the medical aspects of the case, sending the matters to doctors or specialists employed by the board for further clarification of medical reports. I would like to see this interchangeable recurrence of situations to rely again, and heavily, on opinions expressed by doctors employed by the board. I would not like to see that, because it defeats the purpose of the independence of the appeals tribunal.

Mr. Revell: It has to be a subsection 1 panel doctor. Subsection 3 specifically excludes board staff doctors.

The Acting Vice-Chairman: Is there any further discussion under subsection 86h(4)? Shall that carry? Carried.

Next we have subsection 36h(5).

Mr. Riddell: This reads: "The appeals tribunal shall, upon receiving the report of the medical practitioner or practitioners, send a copy thereof to the parties to the appeal for the purpose of receiving their submissions thereon."

Mr. Lupusella: Are we talking about the pre-hearing inquiry before the appeals tribunal starts hearing the case, or are we talking about the middle of the hearing process of the appeals tribunal, on which the appeals tribunal panel will send copies of the report to the interested parties?

Hon. Mr. Ramsay: Either.

Mr. Lupusella: Which means the appeals tribunal may decide, based on the contents of the medical reports coming from this selected practitioner, that if the case does not have any merit to be heard, not to hear the case at all. Am I correct?

Mr. Cain: Not really, because other sections indicate that the appeals tribunal shall hear any decision from the board once the board has reached its final conclusion. Perhaps I am wrong, but I do not think there is anything that specifies here that the appeals tribunal can limit whether an appeal will be heard, other than under clauses 86g(1)(a), (b) and (c).

Mr. Lupusella: The possibility might arise, based on the authority given to the appeal tribunal based on subsection 4, which is the pre-hearing inquiry. We might be faced with such a possibility.

Mr. Cain: Immediately subsection 86h(4) is activated and this vice-chairman or chairman arranges a hearing, if that should happen, a panel will also be struck to hear the case.

Mr. Lupusella: Automatically.

Mr. Cain: But one would assume that perhaps the first date of hearing would be down the road so the examination takes place beforehand and everyone has the medical report before him.

Mr. Lupusella: Let me rephrase my question, then; I think we are speaking about the same thing. Are subsections 86h(4) and (5) on the proceedings process of the appeal system interrelated? One depends on the other and vice versa?

Mr. Revell: Yes, I think so. The appeals tribunal is not going to be asking for a medical report under this section unless an appeal has been launched.

Mr. Lupusella: I want to be clear, because I do not want to see cases in which the appeals tribunal might come to the conclusion that there is no merit in hearing the case; therefore, eventually the case will not be heard after receiving medical reports from practitioners and so on. I would not like to see that happen. I just want to be clear on the principle of it.

The Acting Vice-Chairman: Is there any further discussion on subsection 86h(5)? Carried.

Mr. Riddell: Subsection 86h(6) says: "Nothing in subsection 4 limits the right of the appeals tribunal to exercise its powers under subsection 1 during the hearing of an appeal."

Mr. Sweeney: Why is that subsection necessary?

Mr. Laughren: Why does it not come right after subsection 86h(4)?

Mr. Revell: Why it does not come after subsection 86h(4), Mr. Laughren, I cannot answer; it is lost in the annals of time.

Mr. Laughren: Right. No problem.

Mr. Revell: But the purpose of it is that there is a theory of law that once you express one thing, you have excluded other possibilities. So by having the provision that deals with the pre-hearing inquiry, if the tribunal exercised its power to ask for a medical report under subsection 86h(4), some people would argue that either you do it at the pre-inquiry stage or you never appoint a medical practitioner.

Mr. Lupusella: What if the appeals tribunal, in its wisdom, decides there is no need to appoint this independent practitioner to visit the injured worker? Can the injured worker request that he be visited, and will the appeals tribunal therefore be bound by the decision taken by the injured worker? Or is it up to the appeals tribunal either to do so or not to do so?

Mr. Revell: In my opinion, the way the section is structured it is up to the appeals tribunal to decide whether a medical practitioner will be appointed to assist the panel.

Mr. Lupusella: Even though the injured worker requests that a practitioner be appointed to visit him or her.

Mr. Revell: There is nothing in the section that forces the tribunal to appoint a medical practitioner. Concerning whether it would do so upon request, I cannot speak to how the tribunal would feel in that circumstance.

2:20 p.m.

Mr. Lupusella: I am raising this issue because even within the present infrastructure of the board, some injured workers are dissatisfied with the level of disability. They think they have been treated unfairly through visits from doctors employed by the board. When they come to my office, they ask, "Can you call the board and make sure I will be visited by one of the doctors who is not working with the board?"

I do not know. We really do not have an opportunity to exercise our criticism based on the performance of the appeals tribunal yet, because it has not started its operation. But I would like to extend it in such a way that if a request to appoint a practitioner comes from the injured worker, that wish will be respected by the appeals tribunal instead of leaving everything to it. They cannot lose it. We are not trying to modify their proceedings; it is just a question of getting a clear picture of the injured worker's physical condition based on medical grounds.

Suppose the appeals tribunal says: "There is no need because the case already is clearly spelled out within the content of the board's file in relation to the medical, physical and mental condition of the injured worker. Therefore, based on the accumulation of all medical reports, we do not think it is necessary for you to be visited by a practitioner." They might be right, but they might be wrong as well.

Mr. Revell: I can draft a provision, if that is what you wish, by way of a motion, Mr. Lupusella. I cannot address the policy as to whether it is desirable one way or the other.

Mr. Lupusella: Mr. Chairman, I understand at times our criticism appears not to make sense, based on allegations about the future which might or might not take place. We should not be extremely rigid on the implementation of the law. Maybe it is because I come from Europe, where the law is more flexible, while here we are following the Anglo-Saxon pattern of rigidity of the law, but it should be flexible and we should incorporate an amendment on that. I am sorry; I hope I did not offend anyone.

The Acting Vice-Chairman: You wish to present an amendment then, Mr. Lupusella?

Mr. Lupusella: Yes. It will be drafted by the legal counsel.

The Acting Vice-Chairman: Are there any further discussions under section 6, other than Mr. Lupusella's amendment? All right, let us go ahead with subsection 86h(7), Mr. Riddell.

Mr. Riddell: "If a worker is required by the appeals tribunal to submit to an examination by one or more medical practitioners who provide assistance to the appeals tribunal under this section and the worker does not submit to the examination or in any way obstructs the examination, the worker's right to compensation or to a final decision by the appeals tribunal may be suspended by the appeals tribunal."

The Acting Vice-Chairman: Any discussion under this section?

Mr. Laughren: I have one very short comment. I wonder why the right to a final decision is in there.

Mr. Cain: Because it may hinge on that medical opinion, and therefore a final decision would have to read that way in view of the fact that appropriate medical evidence is required by the appeals tribunal. It is sort of a half-decision.

Mr. Laughren: Okay.

The Acting Vice-Chairman: Any further discussion on subsection 86h(7)? Carried. Section 86i, Mr. Riddell, please?

Mr. Riddell: "Section 83 applies with necessary modifications to the chairman, vice-chairman and other members of the appeals tribunal, to all officers and employees of the appeals tribunal and any person engaged by the appeals tribunal to conduct an examination, test or inquiry or authorized to perform any function under this act."

The Acting Vice-Chairman: Any discussion under this section?

Mr. Sweeney: Just a minute. Let me go back and check section 83. That is the liability section. It also includes the compellability section, does it not?

Earlier we changed the word "commissioner" under section 31 of the bill. We changed the word "commissioner" to "members of the board of directors" in all subsections of section 83. That does not change the basic thrust of the subsections, though

What we are saying here is that section 83 applies to the corporate board, and we are now applying the same conditions to the appeals tribunal members.

The Acting Vice-Chairman: Shall section 86i carry?
Carried.

Mr. Riddell: Subsection 86j(1) states: "Upon receipt of a notice of appeal, the appeals tribunal shall, as soon as practicable, notify the board and the parties of record of the appeal and the issue or issues in respect of which the appeal is brought and shall furnish the same with copies of any written submissions made with respect thereto."

The Acting Vice-Chairman: Does subsection 86j(1) carry?
Carried.

Mr. Riddell: Subsection 86j(2): "Any periodic payments to be paid under a decision of the board shall be paid notwithstanding that an appeal is taken therefrom and any amounts paid may be dealt with as the appeals tribunal shall direct."

Mr. Sweeney: This applies to a point Mr. Cain made earlier. If the board had decided payment should be made and, for example, an employer appealed it, the payments would continue to be made to the injured worker until a different decision was made by the appeal board.

Mr. Cain: Correct.

Mr. Sweeney: In other words, during the appeal process the payment would continue to be made.

Mr. Cain: Yes. That is correct.

Mr. Laughren: There would never be any retroactive aspect?

Mr. Cain: Yes. That approach is not mentioned in the act, and there would never be any retroactive payment.

Mr. Sweeney: Excuse me. "And any amounts paid may be dealt with as the appeals tribunal shall direct." Why could that not permit the appeals tribunal to make a retroactive repayment?

Mr. Laughren: Especially if--I can think of a scenario; maybe I should not, but I could.

The Acting Vice-Chairman: I can think of a lot of scenarios.

Mr. Laughren: One is where an accident is ruled not to have occurred in the work place in the first place.

Mr. Cain: Mr. Sweeney is quite correct, and I agree, Mr. Laughren. If the appeals tribunal rules that the claim should be denied in total and the Workers' Compensation Board had been paying it, then this section would give the appeals tribunal the right to say there is an overpayment that should be requested from the injured worker. That is true.

Mr. Laughren: And they could do that?

Mr. Cain: As I read this section, I think they could.

Mr. Sweeney: It says "any amounts paid may be dealt with as the tribunal shall direct."

Mr. Lupusella: The same thing opposite to that principle, if the injured worker is entitled to retroactive payments, the board has to pay the retroactive payments of entitlement.

Mr. Cain: I do not think that applies here, but that would be an automatic thing. If the appeals board made a decision that the claim should be allowed, then it is allowed from the date of accident, not from the date of the appeal board's decision. There is that sense of retroactivity.

Mr. Lupusella: I understand that.

Mr. Sweeney: Under the present legislation, if a case such as we are describing were to go to the present appeal panel, and it was decided at that stage that the accident did not occur on the work site, is the normal procedure to recover all the money that has been paid?

Mr. Cain: It depends on the circumstances. Frequently, if it is simply the appeals tribunal ruling that the claim should not be allowed and it is based on the evidence that was available at the time the claim was adjudicated, frequently you will find that we do not request the overpayment.

Whereas if new evidence is received that suggests that maybe all the parties initially were a little less than honest, that we were not provided with clear information, then, yes, perhaps in that type of case we would request the overpayment, because all the information was not available though asked for at the time of the initial decision.

That is a very general answer. I cannot be specific.

Mr. Lupusella: I am a little concerned--

2:30 p.m.

Mr. Hess: In connection with the problem, may I point out that the Ombudsman has for years recommended to the ministry that the act be amended to provide for recovery or write-off of overpayments. I believe the members should be aware of that. I am sure they are. I suppose this is one way for the ministry to deal with that situation. It allows an appeals tribunal to determine what it considers to be equitable. After all, it would hear the circumstances, and if it made a decision contrary to what the board had come to and said that payments should not have been made, this would allow the appeals tribunal to receive evidence as to whether it would be just and equitable to not order repayment or recovery and so forth and it could then make an order accordingly. This would be one way of dealing with this rather knotty situation, in my submission.

Mr. Lupusella: I am a little bit concerned about the overload of cases the appeals tribunal might be faced with. In the case of an overpayment, when an appeal is launched, it is easy to detect the amount of money that should be sent back by the injured worker, but in the case where the entitlement has been denied for a certain period, are we expecting the appeals tribunal to become an administrator, calculating the amounts and everything? We are asking enough from the appeals tribunal to render a decision on the merits of the case without it getting deeply involved in the total calculation of an entitlement that has been disallowed by previous hearings.

Maybe someone can help me on the procedure that is going to be followed by the appeals tribunal.

Mr. Cain: Regarding this specific subsection, if there were any payments made under a decision of the board and for some reason the appeals tribunal reversed that decision, it is up to

the tribunal to decide whether or not there is an overpayment that should be collected from the worker. If they did not decide, then the administrative part of the board would have to decide. If we said, "Yes, there must be an overpayment collected," then that would go back through the appeals process, if the worker so desired.

When it comes to a decision within the board that causes an overpayment to occur and the board feels the worker should be asked to give it back and does so, then obviously the worker should have the right to say, "I do not agree that it should be paid back," for whatever reason, and should have the right to go on to the appeals tribunal to get a decision on it. Otherwise, it would be left at the board level and it would not be an appealable decision and not fair to the injured worker.

Mr. Lupusella: Let me rephrase my question because I do not think I was clear enough. Does subsection 86j(2) relate exclusively to an overpayment that has taken place or to a certain amount of money the injured worker has to give back, or does it involve the money that has been disallowed by previous decisions taken by the board in which the appeals tribunal decides that decision was wrong and the injured worker is entitled to a certain amount of money of which the injured worker has been deprived?

Mr. Cain: Subsection 2 refers to a decision by the board allowing something. For example, the board has decided there is entitlement in a claim and commences to pay benefits to the injured worker. At some point, the employer may appeal that decision and say he feels the claim should be rejected. The board will continue to pay benefits on that claim until the appeals tribunal rules.

Let us assume it goes to the appeals tribunal and they rule that the claim should be rejected. It is at that point that this subsection suggests the appeals tribunal may deal with any amounts that have already been paid and direct what should be done about it. They may direct that the board collect the overpayment from the injured worker, or they may direct that while the claim should be rejected, no funds should be requested back from the injured worker.

Mr. Lupusella: You just gave me an example. Let me give you another example.

My weekly payments have been stopped for medical reasons. They have declared that I can do the same job. I am able to provide future medical reports before the adjudicator. The adjudicator denies my appeal. I am at the appeals tribunal stage now. In the meantime, four or five months have elapsed, which means that I have lost five months of compensation. Then I win the appeal.

Do we expect that the appeals tribunal will decide the total amount of money I am entitled to or make a decision that the board has to pay me for that period of time in which my payments have been stopped? What are we expecting from this appeals tribunal, an administrative procedure or just a decision-making process that either I am entitled or I am not?

Mr. Cain: The appeals tribunal would decide whether or not you are entitled to benefits for the interval in which the board denied you benefits or for part of the interval in which the board denied you benefits, and they might decide whether you are entitled to full compensation, partial compensation, a supplement or whatever. They would have to direct what benefits you are entitled to, but once directed, the board will pay automatically. It would go into the past, if that is what they desired.

Mr. Lupusella: I am talking about the worst scenario that could take place. The appeals tribunal directs that I should be paid for a certain period of time. The direction goes back to the lower level, an administrative level. They make the calculation. I disagree with the amount because I am of the opinion that the amount is wrong.

Am I supposed to launch another appeal before the appeals tribunal to clarify the whole issue, or will the whole issue be clarified at the lower level? That is what I am interested in knowing.

Mr. Cain: Obviously, the lower level would try to clarify it. I am not sure how that situation could arise, though I suppose it may.

For example, if the appeals tribunal said the injured worker is entitled to temporary partial 50 per cent for some reason, and the board calculated temporary partial 50 per cent and awarded it, the injured worker could not say, "I do not feel temporary partial 50 per cent is fair," because the appeals tribunal has already stated that the decision is to pay that amount. However, if it has something to do with the earnings basis that was not before appeals prior to that, then obviously the lower level would try to correct it. If that was not resolved, it would end up back in appeals.

Mr. Lupusella: Based on the calculation, instead of \$5,000 based on the appeals tribunal decision, I will be receiving \$4,000. In trying to convince the board that the figure is wrong, I would have to launch another appeal on the amount of money. Am I correct?

Mr. Cain: I can only assume that if the appeals tribunal says \$5,000, that is what the board is going to pay, unless, for some reason, in stating \$5,000, it is the result of a calculation that when you make the calculation, that is wrong; it is not \$5,000. Perhaps they may say--and I do not think they would ever do this--that the injured worker is entitled to temporary total benefits from one point to another point and that it comes to \$5,000.

Mr. Lupusella: Who is going to make the \$5,000 figure? The appeals tribunal or the lower level?

Mr. Cain: Personally, I do not think the appeals tribunal will ever say the \$5,000, because if they did and in the real calculation it turned out to be \$4,500, that would be the correct amount based on calculation, and it would seem to be the appropriate payment to make.

I think the appeals tribunal will say, "Pay this injured worker temporary total benefits from a certain date to another or pay temporary partial 50 per cent." They will not quote a figure, because it is up to the administration to calculate it.

2:40 p.m.

Mr. Lupusella: I do not want to see unnecessary appeals just because the board is persistent in calculating the figures.

Mr. Cain: I agree.

Mr. Lupusella: For example, in a recurrence accident instance, in which the earnings of the injured worker will not be calculated at the present rate when the recurrence took place, but are at the original incident of the accident, which might be four years before.

Mr. Cain: I assume in that case the appeals tribunal would give the board clear direction as to which earnings it is supposed to use. Therefore, the board could not make a choice. It would have to take the one directed by the appeals tribunal.

Mr. Lupusella: If they will do that, or else they will end up with another appeal.

The Acting Vice-Chairman: Is there any further discussion of subsection 86j(2). Shall it carry? Carried.

Mr. Riddell: Subsection 86j(3) says: "Upon receipt of a notice under subsection 1, the board shall forthwith transmit the board's records related to the appeal to the chairman of the appeals tribunal."

The Acting Vice-Chairman: Is there any discussion on subsection 86j(3)? Shall it carry? Carried.

We will go back to subsection 86h(6).

Mr. Revell: I think the best thing to do would be to have a new subsection rather than amend subsection 86h(6). I would propose that it go in as a clause (a), and that section 86h of the act as set in section 32 of the bill be amended by adding thereto the following clause (a):

"At the request of the worker, the appeals tribunal shall appoint a medical practitioner under subsection (1) to conduct an examination of the worker."

Mr. Lupusella: If I may speak on the merits of that amendment, we are not lowering, changing or trying to diffuse the issue of the independence of the appeals tribunal panel. I think it adds a new component in case the appeals tribunal has an opportunity to review all the medical reports contained on the injured worker's file and might come up with the position that there is not really a need for a practitioner to visit or to see the injured worker. By including this subsection, at least the injured worker will have such opportunity in case the appeals tribunal decides the opposite.

Mr. Sweeney: Would you read it again?

Hon. Mr. Ramsay: if you will permit me, I can read it.

The Acting Vice-Chairman: Yes, minister.

Hon. Mr. Ramsay: "At the request of the worker, the appeals tribunal shall appoint a medical practitioner under subsection (1) to conduct an examination of the worker.

Mr. Laughren: Is this the minister's amendment?

Hon. Mr. Ramsay: No, it is not my amendment.

Mr. Laughren: You read it with such conviction I thought it was.

Hon. Mr. Ramsay: I used to get paid for reading things.

Mr. Laughren: But you support it.

Hon. Mr. Ramsay: No, I do not support it.

The Acting Vice-Chairman: Is there any further discussion of this proposed amendment of Mr. Lupusella?

Mr. Lupusella: If it will change the members' minds, maybe Mr. Laughren can move the amendment.

Mr. Laughren: I so move.

The Acting Vice-Chairman: It is moved by Mr. Laughren.

Mr. Laughren: That will really convince them.

The Acting Vice-Chairman: All those in favour of the amendment will please signify. All those opposed will please signify. The amendment is lost.

Motion negatived.

The Acting Vice-Chairman: Shall subsection 86h(6) carry? Carried. We shall go on to section 86k.

Mr. Riddell: Section 86k says: "The appeals tribunal shall determine its own practice and procedure and may, subject to the approval of the Lieutenant Governor in Council, make rules governing its practice and procedure and the exercise of its powers in respect thereto, and may prescribe such forms as it considers necessary."

The Acting Vice-Chairman: Is there any discussion on section 86k?

Mr. Laughren: I have a point. I do not know whether this is covered somewhere else. Is there anywhere that protects the right of workers to appeal after any length of time? Is that in the act? In other words, there is no statute of limitations, if that is the right expression?

Mr. Cain: I am trying to recall, but I do not believe there is. There is one limitation of six months in the Workers' Compensation Act that has to do with the worker's original reporting of an accident. Even there it indicates that with unusual circumstances the board may overlook that. Normally it does, and you probably know of some examples in past history. But I do not believe there is anything in this act.

Mr. Laughren: The injured workers have expressed concern about this. I think it is a legitimate concern, and I wonder whether the committee would agree, if I moved it as an amendment, to adding after the words "as it considers necessary," the words "and providing that there will be no time limits on appeals by injured workers." I guess you could say "or their representatives," but basically that is it. If it is in effect now anyway, why do we not put it in the bill so there is that protection?

Mr. Sweeney: I think it is particularly important because we are setting up a new appeals tribunal that has powers to make its own rules. It is conceivable that even though there is no such time limitation under the present act, the new appeals tribunal may say when it gets a look at the kind of job it has in front it: "Any time after a year, we are not going to hear this any more. If they do not get to us within a year then forget it."

Where it may not be necessary under current practice, it could become a problem with the putting in place of a new tribunal.

Hon. Mr. Ramsay: I have no objections.

The Acting Vice-Chairman: Mr. Laughren, would you repeat that addition to section 86k?

Mr. Laughren: Mr. Hess wanted to add something.

Mr. Hess: The right of appeal is not a matter of practice or procedure, it is a matter of substantive law; so it could not be dealt with by rules in any event. To add an amendment saying there is no time limit on appeal is something that is quite novel to me. There always has been an equitable doctrine that if a person allows too much time to go by without taking any steps, he has to explain why he did or did not and give us some reason for it. As I understand the tenor of the amendment, not even that would be required any longer.

I am just suggesting that the way it stands now there is no fettered time limit for appeal. That is a matter of substantive right. It cannot be dealt with by simply introducing some practice or procedure. You cannot alter a substantive right by some internal rule. There may be some equitable rules that might apply and might be taken into consideration, but I will leave it to the committee to make its own mind up in that regard.

Hon. Mr. Ramsay: I bow to Mr. Hess's opinion.

Mr. Laughren: Over mine?

Hon. Mr. Ramsay: Do not make me say anything, please.

Mr. Laughren: You agreed with me one minute and with him the next.

Mr. Lupusella: Can we get a clear explanation of which section of the present act deals with the issue that an injured worker can appeal a decision even after 20 years and there is no time limit?

Hon. Mr. Ramsay: Mr. Lupusella, can we stand this down? We are trying to find that section.

The Acting Vice-Chairman: Is it agreed that we stand down section 86k temporarily?

Agreed to.

2:50 p.m.

Mr. Riddell: Subsection 86l(1) reads: "The appeals tribunal may confirm, vary, reverse or uphold any decision of the board under appeal."

Mr. Laughren: Would the committee be prepared to add to this section so that it would read: "The appeals tribunal may confirm, vary, reverse or uphold any decision of the board under appeal and the appeals tribunal shall publish its decisions"?

That has been one of the problems in the past that I think we have all heard about: the failure of the board to publish its decisions. That would be an important thing to do.

Mr. Kennedy: What do you mean by "publish?" Send them a letter with all the reasons?

Mr. Laughren: The decisions of the board should be available to people who want to check precedent and that kind of thing.

The Acting Vice-Chairman: You would not identify the injured worker in the publication of the case, would you? Would you only give the claim number?

Mr. Laughren: The courts do when the courts publish decisions of trials. I often hear my learned friends refer to "the crown vs. Gillies," for example.

Mr. Kennedy: The crown always wins too.

Mr. Laughren: That is right.

Mr. Kennedy: Would it satisfy your concern if the claimant were informed of the decision?

Mr. Laughren: That does not help other people.

Mr. Kennedy: Yes, but how much does he have to be informed? Just the decision?

Mr. Laughren: The parties to the appeal are always informed. We know that.

Mr. Kennedy: Adequately, with reasons.

Mr. Laughren: Absolutely. What we are talking about is publication of the decisions, not just for parties to the appeal. If you or I were dealing with a case that might deal with silicosis, for example, we could go to the publication and check out the decisions that have been made in that regard.

Mr. Kolyn: Where would you want them published? What forum are you talking about?

Mr. Laughren: The board keeps records.

Mr. Kolyn: You just said "the crown against Gillies." That would be in the newspapers. Where are you going to publish this?

Mr. Laughren: I am not saying they should send all these things to the newspapers. Nobody would do it, for one thing. They would have to have a library of their decisions, presumably. Where do the courts keep their decisions?

Mr. Gillies: Just like a law text.

Mr. Kolyn: Would that affect anybody's confidentiality?

Mr. Laughren: No, I do not think so.

Mr. Kennedy: I would think claimants could be embarrassed by it being publicly known in some instances.

Mr. Laughren: They even do it in that bastion of social democracy called British Columbia.

Mr. Kennedy: You mean it used to be that.

Mr. Laughren: Alec tells me that they use initials rather than full names. They do not in the courts, do they, Mr. Gillies?

Mr. Gillies: They draw funny pictures of you.

Mr. Sweeney: I think you will find the difference is that a court hearing is a public hearing. This is not a public hearing.

Mr. Kennedy: Then you have to change it. If you reduce it even by using initials instead of the names it is--

Mr. Gillies: I am really torn on this one--

Mr. Sweeney: I am too. I have real reservations on this one.

Mr. Gillies: There is the principle of confidentiality of health records, which we vote on every couple of years. By the

same token, I can appreciate the desire of interested parties other than the principals involved to have a look at these decisions and see if there is some continuity in them. I just wonder how we reconcile those two things.

Mr. Revell: I heard the word "publish" and I had the immediate question that Mr. Kennedy had. I do not think the courts, in fact, publish any decisions whatsoever.

Mr. Laughren: How do you find out?

Mr. Revell: In fact, what they do is they make their decisions available to the public. In Ontario, the major decisions of the courts are published by the Law Society of Upper Canada in a series called the Ontario Reports. Specialist board reports are published by interested people, for example, municipal and planning law reports.

Mr. Laughren: That is publication surely. Is that not a form of publication you are describing?

Mr. Revell: If you use the word "publish," if you say that the board shall do such and such thing, you are putting the cost on the board. I am not taking a stand one way or the other as to what is desirable. I am just pointing out that if you put that cost on the board, the cost of publication is quite substantial.

A lot of the decisions, which would be published at great cost, are the sorts of things you sometimes see in the Supreme Court Reports of Canada, in which the court has decided, without giving reasons, that the appeal will be dismissed. There is a fair amount of that in the Supreme Court Reports.

You are talking about a great deal of cost. Do you mean that they will be available to the public at the board offices?

Mr. Gillies: I think that is the point. If the committee decided to go in this direction, instead of the wording we first heard you could make it, "The appeals tribunal shall make the decisions available for publication."

Mr. Laughren: One thing bothers me there. I appreciate your nonadvocacy position in your explanation. It seems to me I could argue that there could be a saving to the board because of publication as well.

For example, if I am considering an appeal in an area--it would not be a broken leg kind of thing so much as, say, a heart attack on the job or a form of lung disease or epilepsy because of an accident, that kind of thing--if I could go through those published decisions, it might very well deter me from the appeal; on the other hand, it could encourage me.

Either way, it is fair to know what decisions have been made by the board. Who knows? It might even impose a modicum of consistency on the part of the board if it knew its decisions were to be published.

Mr. Gillies: One potential situation that worries me is the discrimination that I am sure we all run into in our ridings by certain employers against people who have drawn compensation. I get complaints in my office all the time. Some people feel they did not get a job because their records were checked, it was found they were on compensation and they were shut out.

Mr. Laughren: Where would they get the records? Where would they find that out? The board would not tell them, surely.

Mr. Gillies: Very often a prospective employer asks the person being interviewed. The person may not know. I do not think they are actually obliged to say, are they? But people usually do.

I just wonder. Despite the merits of what you said, you can now add the dimension that an employer who wanted to conduct himself or herself in this manner could now go and look up the case, read all about it and perhaps cast the prospective employee in a worse light.

Mr. Laughren: I know there are a lot of things out there in the world that cause problems. For example, when you publish the fact that the police have charged somebody for a terrible crime before he has been convicted, it creates publicity, and that person may very well be innocent. As we all know, the damage is done; it has been published. Once a politician is accused of certain terrible things, even though that politician might be innocent, there goes his reputation.

I am not sure your argument holds any more water in this case than it would for a lot of other things.

Mr. Gillies: All I am trying to do is to weigh all the things that come to mind. What will end up leaving the injured worker in a better position?

Mr. Kennedy: It is almost like making it a public hearing. It would be the same thing in the courts. Presumably nearly all of them are heard in public, open court. If the evidence is available to everybody, we might as well throw it wide open for the public to be present during the hearings.

I can see the file being available for perusal by interested parties; I was thinking only of the claimant. The problem with that is that he may pass away or something like this. But then, as Phil has raised the point, what about the other parties to it?

Mr. Laughren: Why not have it anonymous? No names, then?

Mr. Lupusella: No names of companies; nothing. We are interested in the content of the decision just to make sure there is consistency in the decision-making process in the appeals tribunal.

Mr. Kennedy: There is another point. Probably not one in a thousand of the public would have any interest in it; so why would you publish them all?

Mr. Laughren: That is a dangerous argument.

3 p.m.

Mr. Hess: Going back to what Mr. Revell said, the decisions of the courts as published in the Ontario Reports are all edited. There is a fairly substantial editorial board, which considers them, looks them all over, prunes them and so forth, all bearing in mind that they are published because courts' decisions are sort of a precedent and always can be used in argument to govern the courts' decisions in future cases. I suppose that is what is in mind as to how the appeals tribunal has approached a similar set of facts in the past and would be likely to do so again.

Just to simply say they should be published as they are, though, is not the answer one is looking for. It would have to be edited, I suppose, to some extent because as soon as you start changing names or using initials, you are starting to edit, and they would have to be indexed to make any sense of them at all.

What on earth is the sense of the appeals tribunal having available the decisions for two years? How would you even begin to look for what interested you or what you were looking for? It would have to be something about a claim by a beneficiary for something or other or by a worker in respect of a certain type of injury or whatever. There would be a fairly substantial amount of work that would have to be done to make it useful to anyone who wanted to use it.

Mr. Laughren: If that is beyond the wit of the board, they should not do it, but I find that hard to believe.

Mr. Hess: I am not saying that it is beyond the wit of the board. What I am saying is that there is more to it than just simply publishing them or having them available to look at. That is all I am trying to say. To say they have to publish them--they would certainly not have to publish them in a newspaper, I would suggest.

Mr. Gillies: Our friends in the association tell me that in British Columbia they are printed by the board at their expense and either no names are used or they just use initials. Apparently this is the practice too with family law cases out there. I would be very interested to know how it works out there and how much use is actually made of the contents.

Mr. Laughren: I remember where I felt very frustrated. I was working on a case--this is several years ago now when there were fewer cases than there are now--on what is called white hands or Raynaud's disease. I was really frustrated about how to proceed and what kinds of decisions have been made and so forth. You are really on your own; there is no guidance or any precedent or anything like that. If it is there, I do not know where it is. I think it is a legitimate request to know those things.

My own preference would be to have it classified according to the kind of problem with which you are faced. I remember another one with a heart attack on the job, and you could go on and on.

I do not want to be unfair, but I think the system is stacked at the present time against people who want to do good research on a problem, particularly in the disease area, where it is very hard to get the information.

Hon. Mr. Ramsay: May I make a suggestion? It is a very weighty problem. I accept what you are trying to say, and yet I share the concerns of Mr. Kennedy and others. I do not think it is something we can resolve here today. Is it not something that can be referred to the new corporate board for study after they are in place. They can consult with British Columbia, other provinces, other jurisdictions, as to how they handle it.

I just do not think it is something we could or should come to grips with after a minimum of discussion today.

Mr. Lupusella: Would you make your suggestion known to them?

Hon. Mr. Ramsay: Sure. I would be happy to make a request to the board to look at it.

The Acting Vice-Chairman: Do you wish to proceed with your amendment?

Mr. Laughren: I think that is probably the best we are going to get today, a reference to the new corporate board. I would put it in myself, but I do not think it is going to carry in the committee.

The Acting Vice-Chairman: Do you wish to withdraw the proposed amendment to section 86l.?

Mr. Lupusella: No, sir, never.

Mr. Laughren: It is up to my friend from Dovercourt (Mr. Lupusella) to decide.

The Acting Vice-Chairman: Is subsection 86l(1) carried? Carried. Thank you very much. We shall revert to section 86k, which we had stood down temporarily.

Hon. Mr. Ramsay: Mr. Lupusella asked where this was covered or at least where his concern was covered in the existing act. It is section 76 on page 40.

Mr. Lupusella: In the existing act?

Hon. Mr. Ramsay: Yes, in the existing act, on page 40, section 76, reads: "The board may, at any time if it considers it advisable to do so, reconsider any decision, order, declaration or ruling made by it and vary, amend or revoke such decision, order, declaration or ruling."

Mr. Lupusella: That leaves too much discretionary power in the hands of the board. Even though I understand that the board may use such discretionary power in favour of the injured worker,

again, there is the possibility that such request can be denied because of the discretionary power the board has under section 76 of the present act.

The Acting Vice-Chairman: Is there any further discussion under section 86k?

Mr. Laughren moves that section 86k be amended by adding thereto, "providing that there will be no time limits on appeals by injured workers."

Mr. Kolyn: If we are voting on the amendment, I would call for a division under standing order 89(c), as there are a few members missing.

The Acting Vice-Chairman: Would you like to delay it until the other committee members arrive and proceed with subsection 86l(2)?

Mr. Laughren: Are there really not enough members here for that? There is a quorum in the committee, is there not?

The Acting Vice-Chairman: All right, we shall vote on Mr. Laughren's amendment to section 86k. Those in favour of the amendment, please signify. Those against? The amendment is defeated.

Shall section 86k carry? Those in favour, please signify. Those opposed?

Section 86k agreed to.

The Acting Vice-Chairman: Mr. Riddell, please read subsection 86l(2).

Mr. Riddell: It reads, "Every decision of the appeals tribunal and the reasons therefor shall be communicated promptly in writing to the board and the parties of record."

Mr. Lupusella: I think the member for Kitchener-Wilmot (Mr. Sweeney) was talking about the time frame when the decision has to be delivered. I am not sure if he would like to pursue the same issue under this subsection.

Mr. Sweeney: No, it does not apply in the same way.

The Acting Vice-Chairman: Shall subsection 86l(2) carry? Carried. Section 86m, Mr. Riddell.

Mr. Riddell: This reads, "Sections 76, 80 and 81 apply with necessary modifications to the appeals tribunal as if a reference to the board were a reference to the appeals tribunal."

Mr. Sweeney: Section 80 is the one that says, "but shall give full opportunity for a hearing," which is one of the concerns which was expressed earlier. Therefore, it is covered. Yes, that makes sense.

Section 86m agreed to.

Mr. Riddell: Subsection 86n(1) says: "Where a decision of the appeals tribunal turns upon an interpretation of the policy and general law of this act, the board of directors of the board may, in its discretion, stay the enforcement or execution of the order of the appeals tribunal, review and determine the issue of interpretation of the policy and general law of this act, and direct the appeals tribunal to reconsider the matter in light of the determination of the board of directors."

3:10 p.m.

Mr. Gillies: This is all rather contentious.

The Acting Vice-Chairman: I think it was the decision of the committee that it be stood down until tomorrow morning.

Mr. Lupusella: I think I was wrong to raise my concern. I did not know that my concern was already contemplated under section 86n.

Hon. Mr. Ramsay: Are you prepared to--

Mr. Lupusella: I think my concern is incorporated under this item, unless I am completely wrong.

Mr. Sweeney: You said you wanted to give the appeals tribunal the final say.

Mr. Lupusella: Yes, the decision of the appeals tribunal. It was stood down. I am sorry.

The Acting Vice-Chairman: Is it agreed that we stand down 86n(1) until tomorrow morning?

Mr. Sweeney: Yes, it is agreed.

The Acting Vice-Chairman: Mr. Riddell, 86o(1), please.

Mr. Riddell: This subsection reads, "An appeal to the appeals tribunal lies from a decision of the board with respect to the matters referred to in clauses 86g(b) and (c)."

Mr. Sweeney: What happened to subsection 86n(2)?

The Acting Vice-Chairman: It was stood down with 1, was it not?

Mr. Sweeney: No, 1 was stood down.

The Acting Vice-Chairman: It was 1 and 2.

Mr. Gillies: Because 2 arises out of 1.

The Acting Vice-Chairman: Is there any discussion on 86o(1)? Carried.

Mr. Riddell: Subsection 86o(2) reads, "With the leave of the appeals tribunal, a decision of a panel of the board made before this section comes into force may be appealed to the appeals tribunal."

Mr. Sweeney: Wait a minute on that one. Yes, that makes sense.

Hon. Mr. Ramsay: We discussed that a little earlier.

Mr. Sweeney: Yes, that is okay. I just wanted to be sure it was the same thing.

The Acting Vice-Chairman: Shall it carry? Carried.

Mr. Riddell: Subsection 86o(3) reads, "Leave to appeal a decision to which subsection (2) applies shall not be granted unless,

"(a) there is substantial new evidence which was unavailable at the time of the hearing by the panel; or

"(b) there appears to the appeals tribunal to be good reason to doubt the correctness of the decision."

Mr. Sweeney: That would automatically follow when you say--

Mr. Gillies: It is logical.

Mr. Sweeney: --the appeals tribunal is going to make a decision whether it can flow. Why would it do it unless one of those things were present anyway?

Mr. Gillies: Yes. I fear without that subsection every adverse decision that ever went before a panel would be brought back before the tribunal.

Mr. Sweeney: That makes sense.

The Acting Vice-Chairman: Shall subsections 86o(3)(a) and (b) carry? Carried.

Mr. Sweeney: Can I just ask one question in terms of application?

The Acting Vice-Chairman: Yes.

Mr. Sweeney: Mr. Cain is not here. Well, if anybody, maybe even the minister, has some sense of it, what is the provision to get to the appeals tribunal in this particular situation where we are talking about a case that had occurred prior to this act coming into force?

Hon. Mr. Ramsay: I cannot answer that. You will have to wait for Mr. Cain.

The Acting Vice-Chairman: Shall we stand this section down until Mr. Cain returns?

Mr. Sweeney: No. I do not disagree with it. I am just wondering how you effect it, what the mechanics of making it work are. We can get that answer later on.

Mr. Hess: If I might have the temerity to do so, the appeals tribunal can adopt rules, procedures and forms. I assume it will have a form that it will adopt for leave to appeal from a past decision of the board, and it will probably have some guidance as to what supporting evidence is to be filed with it. You are talking about the paperwork that will be required to bring it before the appeals tribunal.

Mr. Sweeney: It is just how you get it started. Once the act comes into force, all new cases will follow a different kind of routine from what it was before, but here we are talking about something that happens before the act comes into force.

Mr. Hess: All I can suggest--and perhaps Mr. Cain, who is now back, can confirm it--is that there will be some rules adopted by the appeals tribunal under 86k, which will deal with these kinds of applications for leave to appeal.

Mr. Sweeney: Doug, the question was--and it is not a major one; just if you happen to know--subsections 86o(2) and (3) deal with issues that occurred prior to this act coming into force, and it says the appeals tribunal has the right to allow itself to hear such cases.

Mr. Cain: Yes.

Mr. Sweeney: What I am wondering is, has any decision been made yet as to what the mechanics are of triggering that?

Mr. Cain: Perhaps I did miss something. The situation is that if a claim has been before the present appeal panel, then the appeal tribunal can only hear that case at the point they give leave to appeal the decision. They must look at it and decide if they want to hear it.

However, any existing claim at the board currently that has not reached the level of the appeal panel, once it passes the appeals adjudicator level, and the injured worker appeals, then moves over to the appeal tribunal because, of course, we have nothing above appeals adjudicator. But for those claims that have already been heard by an appeal panel in the board prior to the proclamation of this act, then the injured worker or whoever wishes to appeal on to the appeals tribunal must get leave from the appeals tribunal to hear it because it already has been heard by the equivalent of the appeals tribunal in the current board before proclamation.

Mr. Lupusella: --explanation before, I got the impression that everyone can appeal before the appeals tribunal even though the level of appeal reached the board's hearing process.

Mr. Cain: Excuse me, we are referring now only to claims that exist prior to the proclamation of the new act. After the new act goes into force, obviously anyone who has a claim after that time can proceed on through to the appeals tribunal. For claims that are in existence before the proclamation, and the claim has not gone as far as an appeal panel under the current board, they go over, but otherwise not necessarily.

Mr. Lupusella: Understood.

The Acting Vice-Chairman: Is there any further discussion under 86o(3)(a) and (b)? Carried? Carried.

Mr. Riddell: Subsection 86p(1): "There is hereby constituted a panel to be known as the Industrial Disease Standards Panel."

The Acting Vice-Chairman: Any discussion under this item?

Mr. Sweeney: There was a question earlier about changing the word "industrial" to "occupational." I do not know whether any review of that has been done already.

Mr. Lupusella: Yes. It has been stood down, I guess.

Interjection.

Mr. Lupusella: We voted, and it was defeated, yes.

Mr. Sweeney: Okay.

The Acting Vice-Chairman: Subsection 86p(1). Carried? Carried.

Mr. Riddell: Subsection 86p(2): "The panel shall be composed of not more than nine members including persons representative of the public and of the scientific community and technical and professional persons."

Mr. Lupusella: I move an amendment to incorporate also the trade union movement, people appointed by the trade union movement.

The Acting Vice-Chairman: Is there any further discussion or any further amendments to this clause 86p(2)?

Mr. Sweeney: If I may just draw attention to the fact that in earlier references we used the term "workers," and we have already asked that be amended to include "or injured workers." I am just wondering if my colleague would consider that rather than the terminology he has used.

Mr. Lupusella: I do not have any objection, John. If you recall the presentation by the United Steelworkers, it appears that they have been dealing extensively with industrial diseases. They were able to develop expertise within such fields. They know the people who got involved have such expertise and why the injured worker affected by the industrial disease eventually does

have the technical medical expertise of the field. I do not have any objection, but I think it makes more sense to use the trade union movement rather than the injured workers, but I am quite flexible. I think that the United Steelworkers' position makes more sense.

Mr. Sweeney: It does not matter.

3:20 p.m.

Mr. Revell: So it is "of the trade union movement," Mr. Lupusella?

Mr. Lupusella: Trade union.

The Acting Vice-Chairman: Mr. Lupusella moves that subsection 86p(2) of the act, as set out in section 32 of the bill, be amended by inserting after "representative" in the second line "of the trade union movement."

Mr. Lupusella: "Of the trade union." Do we need the "movement"?

The Acting Vice-Chairman: How about "representative of trade unions"?

Mr. Revell: Yes, that is better.

Mr. Lupusella: We want to give a sense of revolution around here.

The Acting Vice-Chairman: Those in favour of Mr. Lupusella's amendment please signify. Those against.

Motion negatived.

Mr. Lupusella: No, just Mr. Gillies voting against.

The Acting Vice-Chairman: Shall subsection 86p(2), as printed, be carried? Those in favour please signify. Those against. Carried.

Mr. Riddell: Subsection 86p(3): "The members of the panel shall be appointed by the Lieutenant Governor in Council one of whom shall be designated by the Lieutenant Governor in Council as chairman of the panel and one of whom shall be designated by the Lieutenant Governor in Council as vice-chairman."

The Acting Vice-Chairman: Any discussion on subsection 86p(3)? Carried. Thank you very much.

Mr. Riddell: Subsection 86p(4): "The remuneration, benefits and allowances of the members of the panel shall be determined by the Lieutenant Governor in Council."

The Acting Vice-Chairman: Is subsection 86p(4) carried? Carried. Thank you.

Mr. Riddell: Subsection 86p(5): "The chairman of the panel, subject to such guidelines as may be established by the Management Board of Cabinet and subject to the provisions of the Crown Employees Collective Bargaining Act, may establish job classifications, personnel qualifications and salary ranges for officers and employees of the panel, and the chairman may appoint, promote and employ the same in conformity with the classifications, qualifications and salary ranges so established by the chairman."

The Acting Vice-Chairman: Any discussion under subsection 86p(5)? Carried.

Mr. Riddell: Subsection 86p(6): "The costs and expenses associated with the administration of the panel, including the remuneration and expenses of its members, officers and employees, shall be paid by the Ministry of Labour and shall be chargeable by the ministry to the board and the costs and expenses shall form part of the administrative expenses of the board."

The Acting Vice-Chairman: Any discussion on subsection 86p(6)?

Mr. Lupusella: Where would this panel be located? Within the board's office?

The Acting Vice-Chairman: It does not say.

Hon. Mr. Ramsay: It is not specified. We have not looked at that point.

Mr. Lupusella: Do you have something in mind?

Hon. Mr. Ramsay: No, to be honest with you, I do not.

The Acting Vice-Chairman: Is there other discussion?

Mr. Lupusella: I think it should be out of the board's office.

Hon. Mr. Ramsay: It could well be. We will certainly give that consideration.

Interjection: The Massey-Ferguson plant.

The Acting Vice-Chairman: Is subsection 86p(6) carried? Carried. Thank you.

Mr. Riddell: Subsection 86p(7): "It shall be the function of the panel,

"(a) to investigate possible industrial diseases;

"(b) to make findings as to whether a probable connection exists between a disease and an industrial process in Ontario;

"(c) to create, develop and revise criteria for the evaluation of claims respecting industrial diseases; and

"(d) to advise on eligibility rules regarding compensation for claims respecting industrial diseases."

The Acting Vice-Chairman: Any comments on subsection 86p(7)?

Mr. Lupusella: I have only one comment, which is almost similar to the one I raised previously regarding existing claims. Would they have an opportunity to appeal their case before this panel?

Mr. Cain: This panel is not an adjudicative panel. This panel, as described in clauses 86p(7)(a), (b), (c), and (d), is not for that purpose.

Mr. Lupusella: What about the appeals tribunal? Is the appeals tribunal relying on the criteria that will be developed by this panel on industrial diseases?

Mr. Cain: As you proceed through this section, you will find that the criteria and so forth proposed by this panel go to the board and then certain things occur. The board accepts or rejects the findings and certain other things happen. As you proceed through this section, you will see the process of the panel's reaching conclusions and then sending those conclusions on to the corporate board to rule on them. It is not to do with individual claims. For example, where it talks about eligibility rules regarding compensation for claims respecting industrial diseases, it could well be the eligibility rules for some form of lung cancer or some other particular industrial disease.

Mr. Lupusella: With great respect, I would not like to see such a panel set up without any power. They would develop the expertise in such a particular field as industrial diseases or patient diseases, whatever you may want to call it. I think they should have the power to act as an appeal tribunal, to hear cases about industrial diseases. I understand that will be when phase 2 comes into effect. I do not know what the minister's priority will be on dealing with this issue, but somehow or other I get the impression that the work that will be done by such a panel, which is extremely important, might be lost in due process.

Unless they have the power to hear cases and to act as an appeal tribunal, I really do not see it as an effective measure to deal with the specific problems that are going to be dealt with eventually at the new appeals tribunal level, which does not have the expertise and has to rely on policies which eventually will be set up by the corporate board in that field. I am concerned about that.

Hon. Mr. Ramsay: Could I just make a comment or two there? There are a couple of items here. The notice of findings in subsection 86p(11) says: "Before accepting or rejecting any findings of the panel, the board shall publish in the Ontario Gazette a notice setting forth the nature of the findings and calling for comments, briefs or submissions thereon to be filed with the board within 60 days of the publication of the notice or within such longer period as the board may specify in the notice."

Then jump down to the bottom of the page to subsection 86p(15), which says, "The panel shall, after the close of each year, file with the Minister of Labour an annual report upon the affairs of the panel, and the minister shall cause a copy of the report to be laid before the assembly."

Mr. Lupusella: I understand what the accomplishment will be. Surely they will develop expertise in the field of industrial diseases. They become the experts because they will have the power to investigate, to come out with recommendations and so on. I would give them the power to hear cases as well because of the expertise they will develop. I do not know if you share my feelings.

Mr. Laughren: We had the firemen come before the committee a couple of times--two different groups of firemen if I recall. What is bothering me in this section is that there is nothing that says this panel should take a look at that, for example. They could. There is nothing preventing them from doing it, but there is no impetus built in that they should do that.

Mr. Sweeney: May I also speak to that same point? I notice the definition of "industrial disease" on page 2 of the bill. It says under subclause 1(1)(n)(ii), "a disease peculiar to or characteristic of a particular industrial process, trade or occupation." In other words, "industrial disease" could cover that situation, but when we look at clause 86p(7)(b)--

Mr. Laughren: At what? What are you looking at now?1

3:30 p.m.

Mr. Sweeney: We are looking at page 28, the clause we are on right now. It says, "to make findings as to whether a probable connection exists between a disease and an industrial process," yet there is no definition of "an industrial process." There is a definition of an industry.

Mr. Laughren: But burning an industry down may not be considered a process.

Mr. Sweeney: Yes. I am wondering if the terminology "industrial process" here is correct, because it is not adequately defined under "industrial disease" or "industry," and in fact it may be in conflict with that subsection 2 I read earlier, where sub 2 may properly include under the heading "industrial disease" the firemen who have already been referred to, the reference to making the finding as to the connection between a disease and industrial process may eliminate that, simply because of the use of the terminology.

I do not think an occupation and an industrial process are the same thing.

Mr. Laughren: If I could reinforce that, what is really bothering me about this is we have just had a commission on asbestos which cost a little less than \$2 million, I believe, but regardless of the cost, I do not think the board has taken it very seriously.

Mr. Cain nods his head, but I do not know why.

This panel is a good idea, but I wish there were something that said they were required to look into problems that arise when referred to them by somebody. I think of the Dupré commission on asbestos, for example. That is what is bothering me about this.

By the way, I agree with Mr. Sweeney on the industrial diseases question. I do not have a simple amendment that I can give you, but I think something more needs to be in here.

We have two lawyers discussing this and they will not have the same opinion when they are through.

Mr. Hess: I see merit in the suggestion made that clause (b) on the top of page 28 would probably read more happily if it had been, "between a disease and an industrial process, trade or occupation in Ontario." I concede the merit of that suggestion.

Clause (b) should be amended to add after "process," in the last line, "trade or occupation," as I see it.

Mr. Sweeney: I would move that, if it is acceptable to the committee. I think then it covers the relationship between a disease and any possibility--

The Acting Vice-Chairman: Mr. Sweeney moves that clause 86b(7)(b) be amended to read, "to make findings as to whether a probable connection exists between the disease and an industrial process, trade or occupation in Ontario."

Motion agreed to.

The Acting Vice-Chairman: Is that clause as amended carried?

Mr. Laughren: We are still debating the section though, right? I know you are not trying to curtail debate here, Mr. Chairman.

The Acting Vice-Chairman: Do you have any further comment on the other clauses of subsection 7?

Mr. Laughren: Yes.

The Acting Vice-Chairman: Which? Is clause (a) satisfactory?

Hon. Mr. Ramsay: I agree with the point that Mr. Laughren is making. We have not spelled out how particular topics can be referred to the panel. Circumstances as they unfold would certainly be a motivating factor. You used the example of the fireman. We already have noted we want to refer that to the panel. I guess the question now in my mind, although it was not there until you raised it, is whether we have that authority. Does the panel have to accept my request?

Mr. Sweeney: If you were to take clause 86p(7)(a) and

add, "referred to it by the minister, by occupational groups" or by somebody, to where it says, "to investigate possible industrial diseases," I think that is what Floyd is reaching for.

Hon. Mr. Ramsay: You just cannot throw it completely open. Then you will have everybody in the province.

Mr. Lupusella: Minister, I would suggest that interested parties could make referrals to you and you could refer the cases to the panel.

Mr. Laughren: It would be up to us to convince you through the legislative process.

Hon. Mr. Ramsay: Okay, this has merit. Can we just stand that part down and we will give it some consideration tonight?

Mr. Sweeney: Excuse me, there is one stipulation there. I would also want it to have the power to investigate on its own. It would not be dependent the way I suggested. It might be read to say that it could investigate only whatever you told it to. That is not our intention, or the minister's.

Hon. Mr. Ramsay: I can see a situation where you gentlemen in the Legislature can put some heat on me and I can say, "Fine, I will refer that." I would kind of like to have that caveat that I was able to say that.

Mr. Laughren: Okay. I have only one other point. We have agreed to stand this down until the minister has had a chance to consider it.

I guess we cannot do it now, but I was thinking of Mr. Lupusella's suggestion about having the panel hear cases. I must confess to my friend that my first reaction was negative when he said that, but the more I thought about it the more I thought there might be some merit in the board dealing only with accidents, which is its traditional role anyway.

If the board fails in Ontario, it primarily fails in the disease area. That is my interpretation of it; it fails there more than in the area of problems of broken arms or broken legs. Those can be handled without too much difficulty. It is the disease area that in the future is going to be the test of how good this board is in Ontario, I believe, not the simple broken legs and arms.

For that reason, there is perhaps some merit to phase 2 to which the minister refers from time to time. We could look at something such as that.

Hon. Mr. Ramsay: I agree we could look at it. I certainly could not support setting up another panel at this point.

Mr. Laughren: I have a few problems there, too. You would almost have to rewrite large sections of the bill, I understand that. If you think ahead, that is going to be the problem.

Hon. Mr. Ramsay: I agree totally that is going to be the problem in years to come, so I am certainly prepared to do that.

The Acting Vice-Chairman: Is there any further discussion? We have stood down clause 86p(7)(a) to investigate possible industrial diseases and we should have an answer to that tomorrow morning.

Clauses 86p(7)(b), 86p(7)(c) and 86p(7)(d) carried.

Mr. Riddell: Subsection 86p(8) reads, "The panel may establish special panels to investigate matters arising out of its functions under subsection 6 and may appoint ad hoc members who are specialists in particular diseases and in industrial processes to such special panels which shall report thereon to the panel."

The Acting Vice-Chairman: Any discussion under this section? Carried.

Mr. Riddell: Subsection 86p(9) reads, "The panel shall determine its own practice and procedure and shall not be subject to or affected in any way by the Statutory Powers Procedure Act, or by any rules made under it."

3:40 p.m.

Mr. Laughren: Could I have a layman's explanation of that?

Mr. Revell: It is generally accepted that some of the types of findings that this tribunal or panel would be making may affect certain rights, particularly those making findings as to whether a probable connection exists between a disease and an industrial process, trade or occupation.

The purpose of subsection 86p(9) is to allow the panel to set its own practices and procedures as to what kind of hearing it is going to hold and the kind of notice it is going to be giving with respect to hearings, or whether or not it may be holding a hearing.

I am not as convinced as some people are that notwithstanding the Statutory Powers Procedure Act means that you do not have to hold a hearing. As you are, the Statutory Powers Procedure Act does lay down some minimum requirements about notice and hearings being held in public and so on. I think it is a moot point at the present time as to whether or not a panel such as this would be required to hold an open hearing. If it does set practices and procedures, they certainly have to be the reasonable standards set down by the courts of common law over a period of literally hundreds of years.

Mr. Laughren: Despite their attempt to flaunt their power here?

Mr. Revell: I would not go so far as to say flaunt.

The Acting Vice-Chairman: Any further questions on

subsection 86p(9)? Carried.

Mr. Riddell: Subsection 86p(10), "The panel shall report its findings to the board."

Mr. Lupusella: To the Minister of Labour?

Hon. Mr. Ramsay: No.

Mr. Lupusella: I am trying to give you a high profile.

Hon. Mr. Ramsay: I do not need that.

The Acting Vice-Chairman: Shall it carry? Carried.

Mr. Riddell: Subsection 86p(11), "Before accepting or rejecting any findings of the panel, the board shall publish in the Ontario Gazette a notice setting forth the nature of the findings and calling for comments, briefs and submissions thereon to be filed with the board within 60 days of the publication of the notice or within such longer period as the board may specify in the notice."

Mr. Sweeney: I do not think the Ontario Gazette is very accessible to most people. Quite frankly, even when it is accessible, it is not very popular reading. Is there some place else that this could be done where it is likely to be read?

Hon. Mr. Ramsay: Probably, I am speculating, but the Gazette is what is used for similar arrangements with the Advisory Council on Occupational Health and Safety. That is how we provide notice there. This would not be something new or unique.

Mr. Sweeney: No, I am not saying that. It is probably legally quite proper and anyone who wants it can get access to it. All I am saying is that the day-by-day reality we live under is that not too many people ever see it, and when you do it is a rather daunting publication.

Hon. Mr. Ramsay: The parties that would be concerned about such things would probably see it, there is no doubt about that. Other notices go out as well. In the case of occupational health and safety, other written notices go out to interested parties.

Mr. Laughren: I have a question. I am trying to follow it up a little bit. This is a panel that has investigated a problem such as the one the minister and I were just talking about, for example, the firefighters. Once it has conducted its investigation it reports to the board, then the board publishes in the Gazette the panel's findings and asks the public for comments on those findings and conclusions. Am I right?

Hon. Mr. Ramsay: That is right. We do those very same things in the case of designated substances.

Mr. Laughren: So they say, "This is what the panel discovered about firemen fighting fires and so forth. Then they

I say, "If you want to make any comments, please do it within 60 days to the Workers' Compensation Board, 2 Bloor Street East." Then what happens?

Mr. Lupusella: The board may reject the findings of the panel as well.

Mr. Laughren: No, that is different. This is for the public. This is the public that is sending in information, under subsection 86p(11).

Mr. Sweeney: Surely it is assumed that before subsection 86p(12) triggers in, which is the board's acceptance or rejection of the finding--

Mr. Laughren: Oh, I see.

Mr. Sweeney: --the board is inviting the public to make comments before it makes a decision.

Hon. Mr. Ramsay: It is an additional consultative process.

Mr. Laughren: Okay. I am with you.

The Acting Vice-Chairman: Any further discussion under subsection 86p(11)? Carried. Subsection 86p(12).

Mr. Riddell: Subsection 86p(12) reads: "Upon the expiry of the period allowed for the filing under subsection 11, the board may accept the findings of the panel with or without amendments or may reject the findings."

Mr. Sweeney: Given what we talked about earlier, that the board is going to receive a report from the panel and is going to receive information from the public, one would hope--whether it accepts or rejects--the statement would include reasons, but there is no requirement here that it do so.

Especially since you have had a panel that has done the work that it has, and especially since you have invited public response, I would be rather concerned if all the board did, and under this legislation all that is required of it, is simply to say, "We accept" or "We reject the position," without giving any reasons.

Mr. Laughren: Would that not be under subsection 86p(14)?

Mr. Sweeney: All it does is just say it accepts it or rejects it.

Mr. Laughren: I know, but that is where you should add "and give its reasons," not in subsection 86p(12).

Mr. Sweeney: It does not matter to me. I am just saying it is required somewhere.

Mr. Laughren: No, it does matter, because in subsection 86p(14) it is being published.

Mr. Sweeney: Okay. I see what you mean. All right. Yes, you are right.

The Acting Vice-Chairman: Any further discussion under subsection 12? Carried? Carried. Subsection 86p(13), Mr. Riddell, please.

Mr. Riddell: Subsection 86p(13) reads: "Where the findings of the panel are accepted under subsection 12 with amendments or rejected, the board need not give any further notice under subsection 11."

Mr. Laughren: I would support that if subsection 86p(14) could be amended to give reasons. I think that is fair. You could end up with a never-ending process if you do not cut it off at some point, but I think it is not unreasonable to ask for reasons in subsection 14.

The Acting Vice-Chairman: Are the reasons for acceptance or rejection not published in the Ontario Gazette?

Mr. Sweeney: We would hope so, but it does not require it.

Mr. Laughren: Not at this point, but when we get to subsection 86p(14) we would like an amendment that says "and give reasons."

Mr. Chairman: Does subsection 13 carry?

Mr. Laughren: Before it carries, could we have some indication--I do not like to ask you to jump ahead, but if--

Mr. Sweeney: Can we do subsection 14 before subsection 13?

Mr. Laughren: Yes, so that we can then support subsection 13, if there is some kind of amendment which says, "and give reasons," in subsection 14. Do you follow me, Mr. Chairman?

The Acting Vice-Chairman: Yes. Mr. Riddell, would you continue with subsection 86p(14), please?

Mr. Riddell: Subsection 86p(14) reads: "Where the board accepts or rejects the findings of the panel, notice of the board's acceptance or rejection shall be published in the Ontario Gazette."

Mr. Sweeney: So, if I follow you, Floyd, after the word "rejection" should be something like "with reasons."

Mr. Laughren: Yes, exactly.

Mr. Sweeney: I think they will do it anyway, but let us require them to.

Hon. Mr. Ramsay: I will just check this with Mr. Hess for a moment.

Mr. Sweeney: Is there any reason why they should not?

Hon. Mr. Ramsay: I cannot think of any.

Mr. Laughren: Mr. MacDonald does not have any legal training, does he? The mind boggles.

Hon. Mr. Ramsay: Mr. Hess, do you see any problem if subsection 86p(14) were to be amended as follows, "Where the board accepts or rejects the findings of the panel, notice of the board's acceptance or rejection with reason"--adding the words "with reason"--"shall be published in the Ontario Gazette"?

Mr. Hess: "With reason therefor," did you say?

Hon. Mr. Ramsay: "With reason."

Mr. Sweeney: Something like that.

Mr. Hess: No, there is no objection.

3:50 p.m.

The Acting Vice-Chairman: Is that satisfactory? Shall subsection 86p(14), as amended, carry? Carried.

Shall subsection 86p(13) carry? Carried.

Subsection 86p(15), Mr. Riddell.

Mr. Riddell: Subsection 86p(15) says: "The panel shall, after the close of each year, file with the Minister of Labour an annual report upon the affairs of the panel, and the minister shall cause a copy of the report to be laid before the assembly if it is in session or, if not, at the next ensuing session."

Mr. Laughren: Do we have to use the word "affairs"?

The Acting Vice-Chairman: Is there any discussion on subsection 86p(15)? Carried.

Shall section 86p, as amended, carry? Carried.

Section 86q is next.

Mr. Sweeney: We had better not continue the discussion that was started.

The Acting Vice-Chairman: We have an amendment to section 86q.

Mr. Sweeney: The minister has an amendment, does he not?

The Acting Vice-Chairman: Yes, the minister's amendment.

Hon. Mr. Ramsay moves that section 86q of the act, as set out in section 32 of the bill, be struck out and the following substituted therefor:

"(1) The Minister of Labour shall establish an office to be available to any person who is or has been a claimant for benefits under this act, and the office shall be known as the 'office of the worker adviser.'

"(2) The minister shall pay such remuneration and expenses as may be required to carry out such functions as may be assigned to the office of the worker adviser by the minister.

"(3) The board shall reimburse the minister for the remuneration and expenses referred to in subsection 2."

Mr. Laughren: The ministry or the minister?

The Acting Vice-Chairman: The minister.

Mr. Laughren: Gee whiz! He is going to retire early.

Mr. J. M. Johnson: Is this pocket money?

The Acting Vice-Chairman: Would you move that?

Mr. Gillies: So moved, Mr. Chairman.

Mr. Laughren: I do not know the proper process here. Would it be possible to make an amendment to the amendment?

The Acting Vice-Chairman: Go ahead, Mr. Laughren.

Mr. Laughren: It is a very simple one. I do not have the wording you have in front of you, but--

The Acting Vice-Chairman: I think you have a copy of it.

Mr. Laughren: Okay. Anyway, I guess I would make two changes. I would say "the Attorney General shall establish an office," etc., and "the Attorney General shall be reimbursed."

The Acting Vice-Chairman: The Attorney General?

Clerk of the Committee: You cannot do that.

Mr. Laughren: Why not?

Clerk of the Committee: Because this is an act of the Minister of Labour.

Mr. Lupusella: It has been requested by injured workers across the province.

Mr. Laughren: So I am ruled out of order, am I?

Mr. Revell: Mr. Laughren, I have to disagree with the clerk's advice on that.

Mr. Laughren: I would hope so.

Mr. Revell: Even though the amendment is his, in my opinion it would be quite in order to have that.

Mr. Laughren: It is up to the Attorney General, then, to spend the money. May I speak to the amendment to the amendment?

The Acting Vice-Chairman: Sure. Go ahead, Mr. Laughren.

Mr. Laughren: The reason I do this--we have been through this before, and I will not prolong the committee--is that I think there needs to be an arm's-length distance between the workers' advisers and the Ministry of Labour, and through that to the Workers' Compensation Board.

I believe the model is the community legal clinics that have been set up, which have been operating, in my experience, extremely well. The Attorney General (Mr. McMurtry) has a commitment to those, I believe. Rather than have the Minister of Labour establish this office, I would like to see it established by the Attorney General. No personal affront meant.

Hon. Mr. Ramsay: No. Listen, we have not had an opportunity to discuss this matter with the Attorney General, and I would like to leave my options open. If I agreed to that amendment, then it would be locked in before we had had an opportunity to do the proper consultation.

So I would have to advise that we vote against the amendment to the amendment, but only for that reason. Your suggestion could have merit, but we have not had an opportunity to have the appropriate discussions.

Mr. Lupusella: Can we stand this amendment down until you consult with--

Hon. Mr. Ramsay: No.

Mr. Sweeney: Mr. Chairman, may I pass on to the minister that when we held our public hearings in Hamilton and the Halton legal aid clinic made this proposal to us, I raised two objections. One was the stability of the legal aid clinics: could they be shut down tomorrow? The other was the issue of the funding requirements of the legal aid clinics. In other words, you have to be in a certain financial situation before you can apply for assistance.

I have since received correspondence from the Halton legal aid clinic that satisfactorily answers both those concerns. I raised that question because somewhere in Hansard there may be an appearance that I am opposed to this. I want to be clear that the minister understands that I had raised concerns which have since been responded to. I would be quite prepared to share that with the minister at the point when he wants to discuss it with the Attorney General.

Hon. Mr. Ramsay: That is duly noted.

Mr. J. M. Johnson: I would like to state that my preference is to see the Minister of Labour continue with control of this office. He has responsibility for the Workers' Compensation Board. The two are closely related. I assume it is

the minister who is going to be under the gun if anything goes wrong. If he has to answer in the House, I see no reason why he should not have this responsibility.

Mr. Sweeney: Mr. Johnson, one of the things you should be aware of is that it is not solely a case of us questioning whether the closeness between the Minister of Labour and the Workers' Compensation Board is necessarily a problem. It is equally important to recognize that injured workers themselves have come to accept legal aid clinics as places where they can get this kind of assistance without themselves having the perception of a conflict of interest there.

The second point is that the legal aid clinics--I believe there are something like 45 of them--are now established all across this province. We have in place a facility, a mechanism and people with the background to deal with these kinds of questions.

When we are moving into an expanded worker's adviser service for injured workers, it seems to make sense to be conscious of two things. Do you have to turn around and set up something from scratch, or can you look at something that is already there, operating and providing the service to a limited extent now and expand from there?

Second, can we not be aware of the fact that injured workers, for whatever reasons, have some trepidation about the potential conflict between the ministry and the board? If it is not necessary to add to that trepidation, why not use the facility that is already in place and apparently does not have that problem. That is the other side of it as opposed to saying, "We do not want the ministry to be involved." It is not just that.

Mr. J. M. Johnson: My concern is that every time we involve another ministry, we add another layer of bureaucracy that we have to work through.

Mr. Sweeney: However, it is functioning now. The legal aid clinic in my community does deal now with workers' compensation cases. You would not be adding something; it is already there. It is simply a case of expanding the service and providing more people. They cannot do very much because they simply do not have the people to do it. If we are going to add to the service anyway, why not add to a service that already exists rather than start from scratch?

In the long run economically, it might be less expensive and less bureaucratic because you would not have to set up another operation. You could use one that is already in place.

Mr. J. M. Johnson: I question that very much.

Mr. Kolyn: What you are saying is that the Workers' Compensation Board, by doing away with the workers' advisers and shifting them to legal aid, will now be helping to subsidize legal aid. Is that what you are saying?

Mr. Sweeney: I am not sure how the financing of it would be done. What we are saying is--

Mr. Kolyn: If you want the jurisdiction to go over there, you are asking the Workers' Compensation Board of the Ministry of Labour to pay for legal aid, which does not exclusively deal with workers' compensation cases; it deals with a variety of legal matters.

Mr. Sweeney: It could be done on a contract basis. I do not think there is any problem. If it turns out that the legal aid clinic was using one third of its time and approximately one third of its resources to deal with workers' compensation, one third of its costs would be funded by either the Ministry of Labour--

4 p.m.

Mr. J. M. Johnson: That is the very point I was trying to raise. You are getting into one third, two thirds. Who is going to keep track of how we are going to divide it up? You have another layer of bureaucracy.

Mr. Sweeney: That is no difficulty.

Mr. Laughren: You can avoid that totally by having a worker adviser in the form of a person or persons who would simply operate out of the legal office.

Mr. Kolyn: Who is going to guarantee that that worker or workers is going to be doing the work allocated to him when whoever is running the legal aid office will decide what work he is going to be doing?

Mr. Laughren: That is his job description. That is all that person can do.

Mr. Kolyn: That is easier said than done, Floyd.

The Acting Vice-Chairman: Mr. Laughren moves that subsection 86q(1) be amended to read, "The Attorney General shall establish an office to be available to any person who is or has been a claimant for benefits under this act and that the office shall be known as the 'office of the worker adviser.'"

Those in favour of Mr. Laughren's motion, please signify.
Those against?

Motion negatived.

The Acting Vice-Chairman: Shall the new subsections 86q(1), (2) and (3) be accepted?

Mr. Laughren: I have another amendment.

The Acting Vice-Chairman: You have another amendment?
All right, go ahead.

Mr. Laughren: Do not look so exasperated, Mr. Chairman.

The Acting Vice-Chairman: I am not exasperated.

Mr. Laughren: That is why I am here.

The Acting Vice-Chairman: I sometimes wonder. Go ahead.

Mr. Laughren: It is not your position to wonder. I wonder why you are sitting where you are too.

The Acting Vice-Chairman: Mr. Laughren moves that after the words "shall establish" in the first line of subsection 86q(1), there be inserted the words "in consultation with an advisory committee of representatives of workers and injured workers."

Mr. Laughren: If I could speak to that very briefly, it is a compromise. What I was hoping we could do through the Attorney General's office was to at least make sure that injured workers and unions, whoever is interested, would feel that they had some say in the way this office of the worker adviser would be set up and run.

Hon. Mr. Ramsay: May I respond to that? I do not want to cut off my options. That is what I would be doing if I agreed to that. On the other hand, I give you a commitment, Mr. Laughren, that I will pay heed and accept recommendations from the interested groups before we make a final decision.

The Acting Vice-Chairman: Any further discussion on Mr. Laughren's proposed amendment? Those in favour of the amendment, please signify. Those against?

Motion negatived.

The Acting Vice-Chairman: Shall section 86q, as amended, carry? Carried.

The Acting Vice-Chairman: Section 86r reads: "(1) The Minister of Labour shall establish an office to be known as the 'office of the employer adviser' and shall pay such remuneration and expenses as may be required to carry out such functions as may be assigned to it by the minister.

"(2) The board shall reimburse the minister for the remuneration and expenses referred to in subsection 1."

I think we had that one in the last one. That was section 86q.

Mr. Lupusella: Industries which have 20 employees, I guess. Am I mistaken?

Mr. Laughren: I want to amend this so that it will be consistent with the Occupational Health and Safety Act.

Hon. Mr. Ramsay: I am sorry. Which section?

Mr. Laughren: We are on section 86r, the establishment of the office of the employer adviser.

In order that it be consistent with the Occupational Health and Safety Act, which I believe applies to work places of more than 20 employees, we should do the same here and say, "The Minister of Labour shall establish an office to be known as the 'office of the employer adviser' which shall be available to all employers with fewer than 20 employees." This is only in the interest of consistency.

Hon. Mr. Ramsay: Okay. But I want to give you the reasons why I cannot agree with that. I have found in my constituency office, not as many but a good percentage of employers who are as confused and stymied, etc., in their dealings with the Workers' Compensation Board as are the workers.

Mr. Laughren: That says something.

Hon. Mr. Ramsay: They find it difficult to understand the bureaucratic role of the WCB. One hopes that the office of the employer adviser will assist them in that respect. When you cut it off at 20, there are many companies that may have 50 employees, but the manager or owner does everything including making up the payroll and sweeping out the store at the end of the day.

Mr. Laughren: Do you want to make it 30?

Mr. Kolyn: A small business is defined as 100 or fewer.

Mr. Laughren: Fine. Put it at 100 if that makes you happy.

Hon. Mr. Ramsay: No. I am not interested in that.

Mr. Laughren: I am flexible.

The Acting Vice-Chairman: Is that an amendment?

Mr. Laughren: Do you know what I am worried about?

Hon. Mr. Ramsay: Yes, I know what you are worried about.

Mr. Laughren: I am worried about the fact that every time an employee appeals, then certain employers will trot down to the office of the employer adviser and solicit some assistance. If I were the board, I would be very concerned about this section, about the costs and so forth.

Hon. Mr. Ramsay: Personally, I do not feel that will happen to the same degree that you do.

Mr. Kolyn: It is speculation right now.

Mr. Laughren: I agree, and I am trying to head it off. I am going to head it off at the pass in the interests of--

Mr. Kolyn: Of fairness. You have to fair, you know.

Mr. Laughren: --saving the board money so that it can put that money into benefits--

Mr. Kolyn: That is fine. There is nothing wrong with that.

Mr. Laughren: --and salaries for its top echelon, including the legal counsel, of course.

The Acting Vice-Chairman: Mr. Laughren, are you prepared to give us an amendment to this?

Mr. Laughren: Yes.

The Acting Vice-Chairman: Or shall we proceed with subsections 86r(1) and (2) as printed?

Mr. Laughren: No. I already moved it. It said: "The Minister of Labour shall establish an office known as the 'office of employer adviser' and the services of that office shall be available to all employers with more than 100 employees."

Mr. Gillies: More than 100?

Mr. Laughren: Fewer than 100. Sorry. I take that back.

Mr. Gillies: He is in alliance with big business again.

The Acting Vice-Chairman: Those in favour of Mr. Laughren's amendment please signify. Those against.

Motion negatived.

Shall subsections 86r(1) and (2) as printed carry? Those in favour signify. Those against. Carried.

4:10 p.m.

On section 33:

Mr. Riddell: "Section 113 of the said act is amended by striking out 'Trustee Act' in the eighth line and inserting in lieu thereof 'Pension Benefits Act.'"

Mr. Revell: I think there is an amendment.

The Acting Vice-Chairman: Yes, there is an addition, is there not?

Mr. Sweeney: There is an 86s that is supposed to be French-language services.

The Acting Vice-Chairman: Yes, I am sorry. We overlooked that one.

Section 33 agreed to.

The Acting Vice-Chairman: Now we shall revert to an additional section, which will be called 86s. "I move that section 32 of the bill be amended by adding thereto as a section of the act the following:

"86s. Services under this act shall where appropriate be made available in the French language." Any discussion?

Motion agreed to.

Section 32 agreed to.

On section 34:

Mr. Riddell: Subsection 34(1) of the bill reads:

"Subsection 122(9) of the said act is repealed and the following substituted therefor:

"(9) If the worker at or before the date of the disablement was employed in any process mentioned in the second column of schedule 3 and the disease contracted is the disease in the first column of the schedule set out opposite to the description of the process, the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved."

Mr. Laughren: This is a question more than anything. What if there are processes missing? What is the mechanism for adding a process and a disease to schedule 3?

Mr. Gillies: Does not the industrial disease standards panel makes representations which--

Mr. Laughren: I am sorry. It is here.

The Acting Vice-Chairman: Subsection 9 carried.

Mr. Riddell: Subsection 9a reads: "If the worker at or before the date of the disablement was employed in any process mentioned in the second column of schedule 4 and the disease contracted is the disease in the first column of the schedule set out opposite to the description of the process, the disease shall be conclusively deemed to have been due to the nature of the employment."

Mr. Laughren: I have schedule 3 in front of me, but I do not have schedule 4.

Mr. Hess: It is going to be a new one.

Mr. Laughren: A new one with designated substances and that kind of thing?

Mr. Hess: Yes.

The Acting Vice-Chairman: Does subsection 9a carry?
Carried.

Mr. Riddell: Subsection 34(2) of the bill reads:

"Subsection 122(12) of the said act is repealed and the following substituted therefor:

"(12) Notwithstanding any other provision of this act, the board may enter into an agreement with the appropriate authority

in any jurisdiction in Canada to provide for the apportionment of the costs of the claims for industrial diseases for workers who have had exposure employment in more than one Canadian jurisdiction."

The Acting Vice-Chairman: Carried? Carried.

Mr. Riddell: Subsection 34(3) reads: "Subsection 122(16) of the said act is amended by inserting after '3' in the third line 'or 4.'"

Mr. Laughren: Schedule 3 or 4.

The Acting Vice-Chairman: Carried? Carried.

Section 34 agreed to.

On section 35:

Mr. Riddell: Section 35 reads: "Section 125 of the said act is amended by adding thereto the following subsections:

"(2) The payments and deposits referred to in section 29 and 33 shall be invested in any such securities as a trustee may invest in under the Pension Benefits Act."

Mr. Laughren: Question. I remember we got into this quite a few years ago because there was a list of where the board could invest and on that list was "bonds of South Africa." I do not know whether that is still there or not, but I would hope it is not.

Hon. Mr. Ramsay: It is not. Mr. MacDonald has indicated to me that it is not.

Interjection.

Mr. Laughren: It was, absolutely. Okay, I am happy.

The Acting Vice-Chairman: Subsection 125(2) carried? Carried.

Mr. Riddell: Subsection 125(3): "The board, where it considers proper, may add to the amount payable by an employer under subsection 1 a percentage or sum for the purpose of raising special funds and the board may use such moneys to meet a loss or relieve any employer in schedule 2 from all or part of the costs arising from any disaster or other circumstance where, in the opinion of the board, it is proper to do so."

Mr. Lupusella: What is "from any disaster" related to?

Mr. Sweeney: Is it like something extraordinary?

Interjection: A nuclear disaster.

Interjections.

Mr. Sweeney: There is no definition of what disaster includes, I presume. This is a new subsection. What is intended by it?

Mr. W. R. Riddell: As I understand the amendment, we are talking about schedule 2 only, not schedule 1. It says "special funds" so presumably it would be like the second injury fund or a disaster fund. It empowers the board to do with schedule 2 what it now does and can only do with schedule 1.

Mr. Kolyn: Would the Mississauga train disaster, a chemical spill or something like that, be an example--somewhere it had to be cleaned up and somebody got injured?

Mr. W. R. Riddell: To me, that would probably be a good example of how it could be used, because there was a disaster fund for Hurricane Hazel under schedule 1.

Mr. J. M. Johnson: It is something fairly unique.

Mr. W. R. Riddell: Yes. I believe so.

Mr. Laughren: Would another example be Manville Canada?

Mr. W. R. Riddell: No, because Manville is schedule 1. This is only schedule 2. Whatever is in place is for schedule 1.

Interjection: It is already there for schedule 1.

Mr. W. R. Riddell: Whatever is there, which is really just the second injury fund and the disaster.

Mr. J. M. Johnson: An example such as Mississauga "may add to the amount payable by an employer." Who would pay that? Canadian National?

Mr. W. R. Riddell: I assume it is the schedule 2 employer.

Mr. J. M. Johnson: If it is a railway tragedy or accident, it would impact on the railways.

Mr. W. R. Riddell: I assume that what is contemplated is a levy on schedule 2 employers to create this disaster fund.

Mr. Kolyn: If the railway were hauling toxic chemicals and a worker was injured trying to clean up the toxic chemicals, what would be the schedule 2, the railway or the toxic chemical manufacturer?

Mr. W. R. Riddell: That is a very difficult question.

Mr. Kolyn: That would have to be argued in a court of law.

Mr. W. R. Riddell: It certainly would, because you have not only the railway but also the manufacturer of the car the chemicals were in, whoever loaded the chemicals and perhaps the manufacturer as.

Mr. Kolyn: It is fairly fuzzy at the moment.

Mr. J. M. Johnson: Should we not stand this one down?

Interjection: Why?

Mr. Sweeney: All it says is that whatever applies in schedule 1 is now going to apply in schedule 2. That is basically what it amounts to. There are problems in both. They just have to be dealt with on an individual basis.

Mr. Kolyn: They are evidently rare.

Mr. Sweeney: You cannot change it. There is no way you can write legislation to deal with specific cases. You can only write a general rule.

Mr. Kolyn: We are dealing in generalities.

Mr. Sweeney: All Mr. Kolyn is drawing to our attention is that it is not going to be simple to administer. There are going to be problems with it, but it is there.

The Acting Vice-Chairman: Is subsection 35(3) carried?
Carried.

Section 35 agreed to.

4:20 p.m.

On section 36:

Mr. Riddell: "Section 131 of the said act is repealed and the following substituted therefor:

"131. This part does not apply to domestics or their employers to whom part I applies."

Mr. Laughren: Why is this necessary? I am confused about it.

Mr. Hess: I will make a stab at it. At the present time, the act does not apply to domestic or menial servants or their employers.

Mr. Laughren: But now it does.

Mr. Hess: I refer you to section 131 of the existing act.

Mr. Laughren: Right. I see that.

Mr. Hess: This amendment limits that. It says, "This part does not apply to domestics or their employers to whom part I applies."

There is a regulation which will be creating a classification in schedule 1, as I understand it, of employers of domestics who work more than so many hours in a week for that

employer. Those domestics and their employers who come within that amendment to the classification in schedule 1 will be taken out of part II and put in part I, where they become schedule 1 employers. The part will no longer apply to them. It will continue to apply to those domestics and employers to whom part I does not apply, as I understand it.

Mr. Sweeney: The present act says, "This act does not apply to domestics," but this new section says, "This part does not apply."

Mr. Hess: Yes.

Mr. Laughren: Where is it in part I? Which page?

Mr. Hess: It is rather obscure, but--

Mr. Sweeney: Back in the definitions we included--

Mr. Laughren: Have we not now added domestics to--

Mr. Gillies: We are in the definition section, are we?

Mr. Sweeney: I think there is something under workers.

Interjection: We did add it, but I cannot remember where.

Mr. Hess: In industry. We changed something.

Mr. Sweeney: Oh, yes. "Industry" includes "and, where domestics are employed, includes a household."

Mr. Laughren: Which page is that?

Mr. Sweeney: Page 2, under the new clause 1(1)(o) of the act, the definition of "industry."

Mr. Laughren: Let me get this straight, because I am still confused. What section 36 is doing--

Mr. W. R. Riddell: May I speak to that?

Mr. Sweeney: Please. We are confused.

Mr. W. R. Riddell: At present, section 131 reads, "This act"--and that is the whole act--"does not apply to domestic or menial servants or their employers." "This part," which is part II, "does not apply to domestics or their employers to whom part I applies."

Mr. Hess has explained the ones that are under part I. However, the rest of them will be under part II, as opposed to not being under the act at all. What part II does, for instance--and I am just reading the side notes. Section 129 creates a liability on the employer for defective ways, works and so on--similarly, for defective machinery, plant, buildings or premises.

As I understand it, the thought line behind saying "Part II" is so that those persons who are not under part I can, in proper

circumstances, sue the home owner or whatever. I believe what Professor Weiler said in his report was that they could get the benefits of the home owner's insurance if there were an injury.

Mr. Laughren: It is too bad there was not a different way of putting it, because most people would have difficulty reading this section unless they had been trained at the bar.

Mr. Kolyn: It is never too late.

Mr. W. R. Riddell: It is difficult.

Mr. Laughren: I would want to spend a lot of time at the bar before I would attempt to--

Mr. Kolyn: Four years; that is all you need.

Mr. Laughren: A couple of weekends, yes. It really is a difficult one to get your mind around.

Mr. W. R. Riddell: --interpretation by the court, otherwise we would do the lawyers out of a job.

Interjections.

Section 36 agreed to.

On section 37:

Mr. Laughren: Can we not do this tomorrow?

The Acting Vice-Chairman: Let us go through with it here and finish it off.

Mr. Riddell: "The said act is further amended by adding thereto the following part:

"Part III

"132. "Subject to this part, this act, as it read immediately before the coming into force of this section, continues to apply to personal injury by accident and to an industrial disease where the accident or disease occurred before the day this section comes into force, and to death resulting from injury or industrial disease where the death occurred before the coming into force of this section."

Mr. Sweeney: I would draw to your attention that way back when we were talking about surviving spouses I served notice that when we came to this section, I would want an amendment introduced that would permit some form of retroactivity because it was suggested to us by legal counsel this would be the most appropriate place to put it.

Mr. Laughren: The section is really substantially--

Hon. Mr. Ramsay: Stand it down until tomorrow.

The Acting Vice-Chairman: All right.

On section 133:

Mr. Riddell: "(1) Sections 21, 22, 42 and 49 of this act, as continued by section 132, are repealed."

Mr. Laughren: That is the retroactivity, part II, is it not? It is referring to the previous part, 132.

The Acting Vice-Chairman: Stood down? All right.
Subsection 133(2).

Mr. Laughren: The same thing.

The Acting Vice-Chairman: The same thing? Very well.

On section 134:

Mr. Laughren: The same thing.

On section 135:

Mr. Riddell: "Subsection 43(5) of this act, as continued by section 132, is repealed and the following substituted therefor:"

Mr. Laughren: Stand it down.

The Acting Vice-Chairman: I think this is a good time to adjourn.

The committee adjourned at 4:28 p.m.

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Government
Publications

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

THURSDAY, SEPTEMBER 13, 1984

Morning sitting

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)
Gillies, P. A. (Brantford PC)
Havrot, E. M. (Timiskaming PC)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Kennedy, R. D. (Mississauga South PC)
Laughren, F. (Nickel Belt NDP)
Lupusella, A. (Dovercourt NDP)
Mancini, R. (Essex South L)
Riddell, J. K. (Huron-Middlesex L)
Sweeney, J. (Kitchener-Wilmot L)
Yakabuski, P. J. (Renfrew South PC)

Substitution:

Kolyn, A. (Lakeshore PC) for Mr. Villeneuve

Also taking part:

Gillies, P. A. (Brantford PC), Parliamentary Assistant to the
Minister of Labour

Ramsay, Hon. R. H., Minister of Labour (Sault Ste. Marie PC)

Clerk pro tem: Carrozza, F.

Staff: Revell, D., Legislative Counsel

From the Ministry of Labour:

Armstrong, T. E., Deputy Minister

Cain, D., Director, Claims Review Branch, Workers' Compensation
Board

Hess, P. A., Director, Legal Services Branch

Wolfson, Dr. A. D., Assistant Deputy Minister, Program Analysis
and Implementation

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, September 13, 1984

The committee met at 10:08 a.m. in committee room 2.

WORKERS' COMPENSATION AMENDMENT ACT
(continued)

Resuming the adjourned consideration of Bill 101, An Act to amend the Workers' Compensation Act.

Mr. Chairman: I call the meeting to order. I understand that with the acting chairman you really zipped through things yesterday.

Mr. Havrot: No, it was the co-operation of the committee. They are nice people.

Mr. Chairman: Oh, is that right? It was not the chairman. You are not taking credit for it, then.

Mr. Havrot: No.

Mr. Chairman: Oh, I see. Okay.

The minister does have a statement to make, but unfortunately he will not be here for a few minutes. If you want to attempt to deal with section 135, which is on the last page of the book, page 31, it deals with periodic payments, among other things. We can deal with that until the minister arrives, and then we can get into all the stood-down items with his statement.

Section 135--

Mr. Sweeney: Mr. Chairman, there is just one problem. I have an amendment to propose for section 132. I notice there is a reference to section 132. I am not sure what the connection is, but I do not want something passed if it is going to influence what I want to state.

Mr. Chairman: With your amendment.

Mr. Sweeney: It is the question about the spousal allowances.

Mr. Lupusella: I think this particular clause was stood down because there was some sort of relationship with previous subclauses as to the earning capacity of the workers.

Mr. Sweeney: This amendment is the gist of it, but we can reword it later.

Mr. Chairman: In the very first introductory paragraph

it refers to section 132. Can anyone tell me briefly how drastically is it going to affect section 132?

Mr. Sweeney: My amendment deals with the retroactivity factor for surviving spouses and dependent children. I want to be sure that anything we do from here on in does not prohibit me from making that amendment when we come back to section 132. That is my only concern. I am not sure exactly how section 135 may interfere with that.

Mr. Chairman: Mr. Revell, can you answer that question for Mr. Sweeney?

Mr. Revell: I have just received Mr. Sweeney's amendment. I honestly cannot answer the question. I believe that section 135, because it deals with subsection 43(5) of this act, deals with something that is independent of the issue Mr. Sweeney wants to deal with. I think Mr. Sweeney's amendment could be dealt with either as part of section 132 or as a new section 137. As I understand it, Mr. Sweeney, it really has to deal with providing a lump sum and periodic payments.

Mr. Sweeney: My understanding of section 132 basically is that for previous claimants things are going to continue as they were. In other words, there are no changes for existing claimants. That is my interpretation of section 132.

Mr. Revell: That is correct.

Mr. Sweeney: All I want to indicate by adding my amendment is to say, "except for the surviving spouses and dependent children."

Mr. Hess: Section 135 deals with permanent disability. It does not deal with the type of benefits your amendment deals with, Mr. Sweeney.

Mr. Sweeney: That was the question I wanted to ask, Mr. Hess. I am quite prepared to deal with section 135, provided it does not in any way prevent me from making the amendment I want to in section 132. I do not want to come back later on and say, "Oh, well, we cannot make that change in section 132 because we have already passed section 135." That is my concern.

Mr. Hess: I think you are dealing with two different subject matters.

Mr. Sweeney: All right; if that is the case we can go ahead.

Mr. Chairman: Section 135 says: "Subsection 43(5) of this act, as continued by section 132, is repealed and the following substituted therefor:

"(5) Notwithstanding subsection (1), where the impairment of earning capacity of the worker is significantly greater than is usual for the nature and degree of injury, the board may

supplement the amount awarded for permanent partial disability for such period as the board may fix unless the worker,

"(a) fails to co-operate in or is not available for a medical or vocational rehabilitation program which would, in the board's opinion, aid in getting the worker back to work; or

"(b) fails to accept or is not available for employment which is available and which in the opinion of the board is suitable for the worker's capabilities."

Mr. Lupusella: On previous subclauses I think we had the opportunity to discuss the implication of impairment of earning capacity. It appeared then that the minister was to look into this definition and come up with a better interpretation of "earning capacity of the worker" and when the impairment of his earning capacity is "greater than is usual for the nature and degree of injury."

The other problem I have is that if subsection 135(5) stands as it is, in which there is a clear definition of "impairment of earning capacity of the worker" which "is significantly greater than is usual for the nature and degree of injury," then I have problems with the permissive verb "may," which should be changed to "must." I think we have to define the discretionary power the board has with the verb "may," which should be changed to "must."

It is another clear-cut case in which it is defined by the board that "the impairment of earning capacity of the worker is significantly greater than is usual for the nature and degree of injury"; therefore, "the board must make..." I do not want to make the same argument as with a severely disfigured injured worker in which the board "may" give the lump sum; it is the same type of argument, and I refuse to accept the discretionary power given through the permissive verb "may."

Mr. Chairman: We can anticipate an amendment from you to change "may" to "shall."

Mr. Lupusella: For the first concern about the impairment of earning capacity it appears that the minister was supposed to review this definition and come up with a better one. This was our understanding from the very beginning.

I move that "may" be replaced with "shall."

Mr. Gillies: Mr. Chairman, I will certainly check the record, but we are trying to remember at what point the minister did commit himself to looking into the question of the impairment of earning capacity.

Mr. Lupusella: There was a big debate, if you recall--and you were here--on subsection 45(1) on page 14 of the bill: "Where permanent disability results from the injury, the impairment of earning capacity of the worker shall be estimated from the nature and degree of the injury, and the compensation shall be a weekly or other periodic payment during the lifetime of the worker."

I have a problem defining "the impairment of earning capacity of the worker" and "the nature and degree of the injury." If you recall, my argument was that if an injured worker gets a degree of disability in the range of 10 per cent, the nature and degree of the injury is not high enough to impair the individual injured worker's going back to work, which means that further entitlement under this bill can be denied as a result. I do not like this type of--

Mr. Gillies: The problem is, Mr. Lupusella, that subsection 45(1) was not stood down; it was carried.

Mr. Lupusella: No, the minister made a commitment, if you go back to the record, that he would review this definition.

Mr. Chairman: I do not recall whether he made that commitment or not; I do know that subsection 45(1) was carried. However, I recall very clearly the concern you raised.

Mr. Lupusella: Maybe it was some very different--

Mr. Chairman: Subsection 45(7) also contains the same phrase, and it was stood down. But it was not stood down for that reason, as I recall it; it was stood down more for the definition of "suitable and available."

Mr. Sweeney: Mr. Chairman, does your record show that subsection 45(5) was stood down, or was it passed?

Mr. Chairman: It was carried. It was to be stood down, and then it was carried.

Mr. Sweeney: That was the one on which we had a considerable discussion of the difference between impairment of earning capacity and impairment of earnings. Do you remember that particular discussion?

Mr. Chairman: I do, yes.

Mr. Sweeney: I do not have it marked here as being carried.

Mr. Lupusella: Yes, you are right.

Mr. Sweeney: Was it carried or not?

Mr. Chairman: The amendment was carried, I think. We will have to check the amendments on that one.

Mr. Sweeney: Subsection 45(5).

10:20 a.m.

Mr. Chairman: I think we changed "earning capacity" to "earnings."

Mr. Sweeney: Impairment of earnings.

Mr. Chairman: We did discuss that.

Mr. Laughren: We took out the word "significantly" too.

Mr. Chairman: Pardon?

Mr. Laughren: Did we not take out the word "significantly" as well?

Mr. Chairman: I do not think so.

Mr. Laughren: Oh, we tried.

Mr. Gillies: I do not believe there were any amendments in that section.

Mr. Chairman: No, there was no amendment.

Mr. Lupusella: There was no amendment about--

Mr. Chairman: There was an amendment proposed and not carried to turn "earning capacity" to "earnings." It must have been defeated.

Mr. Lupusella: The amendment was defeated but the minister gave us a commitment--I hope I am wrong, but that is what it is--that he would review the definition of "impairment of earning capacity of the worker"--

Mr. Sweeney: Any money?

Mr. Lupusella: --"is significantly greater than is usual for the nature and degree of the injury." He was to give us an answer today while we are debating the sections which have been stood down.

Mr. Gillies: We will certainly check on that for you and if the commitment was made, rest assured we will keep--

Mr. Lupusella: I hope I am wrong.

Mr. Gillies: No, we will check on that for you.

Mr. Sweeney: I am looking at subsection 43(5) of the existing act and the changes that are being made in section 135 and I am having difficulty seeing where the change is. Will someone draw it to my attention?

Does the parliamentary assistant have an explanatory note? It looks like basically the same wording. The wording is adjusted into different kinds of paragraphing, but the wording itself seems very similar.

Mr. Gillies: There is a substantial difference between subsection 43(5) and the new section 135 with regard to the effect of inflation--

Mr. Sweeney: The "75 per cent" is moved down to

subsection 43(5a) and "fails to co-operate" is put into different paragraphing, but the substance seems to be the same. What am I missing?

Mr. Gillies: I do believe there are three substantive changes that arise out of the rest of the bill. One is reference in the new act to the effects of inflation. Second, it makes reference to the changes we are making in this act with regard to the Canada pension plan; and third, it makes reference to the older worker provision in this bill.

Mr. Sweeney: The subsection 43(5b) part of this.

Mr. Gillies: Right. I believe those are the three changes and they just refer back to the other changes we have made in the bill.

Mr. Sweeney: All right.

Mr. Laughren: I am going to need the help of perhaps Mr. Cain here.

Mr. Chairman: I am sure you will get Mr. Cain's co-operation.

Mr. Laughren: I have a couple of comments because of the conversations.

Is this the section where a worker is on total temporary benefits and they go from total temporary to a permanent disability pension and a supplement? The reason I raise it here is there is what I regard a very serious inequity--I do not think intentional--in the bill. If a worker goes from a total temporary to pension with supplement, and is not presently working, the supplement is based on the pension which goes back to the time of the accident.

I know of a case where a worker was losing \$600 a month going from total temporary to pension with supplement. Do you follow me? I do not know whether this is the right section to deal with it or not, but I do not think the board really wants it that way. I do not think that is the intention, because a worker should not have to go through that. It makes no sense.

They recognize it with the total temporary. They give the worker a decent level, but then because of some weird interpretation, when it goes to pension plus supplement, in the case I know of he loses \$600 a month. There should be some way of changing that so the worker does not get shafted that way.

Mr. Cain: The difference in the amount of money a person might receive when receiving total temporary benefits and receiving a supplement is the direct result of the earnings used in order to pay those.

Mr. Laughren: Exactly.

Mr. Cain: For example, when it comes to paying temporary total benefits, we normally use four weeks' earnings prior to the accident. If it is to the benefit of the worker, we can always take a year's earnings. Sometimes taking a year's earnings is not to the benefit of the worker, so we do not do it for a temporary total. But the act tells us we must use a year's earnings in order to set the permanent disability basis. As a result, in setting the permanent disability earnings basis, we may be using lower earnings than we were using for the temporary total.

This section we are referring to right now is a supplement section within the pension section.

Mr. Laughren: That is what I am talking about.

Mr. Cain: Therefore, we utilize a year's earnings in order to pay the supplement as well as the clinical pension. We are using that year's earnings which, as I say, may be lower than the four weeks' earnings. That is why you might on occasion see a difference between those amounts of money.

Mr. Laughren: It probably does not happen that often, but when it does, it really sticks it to the injured worker: in this case, \$600 a month. How can we change that? What kind of amendment would change that? It really is inequitable.

Mr. Cain: The problem is that in a sense the current act suggests that a year's earnings is the fairest way to set an earnings basis, but we use by practice four weeks for temporary total. We do not reduce the temporary total benefits when we find that a year's earnings are lower than four weeks. To change it I suppose we would have a requirement that permanent disabilities would be based on four weeks' earnings.

Mr. Laughren: Or.

Mr. Cain: Or you could say "or one year".

Mr. Laughren: Maybe that is the answer.

Mr. Cain: That certainly is one alternative.

Mr. Laughren: I think even the board would agree that is not the intent.

Mr. Cain: The problem is that in a sense everyone has always thought, rightly or wrongly, that one year's earnings is the fairest way to do it in the long run. One year's earnings seem to represent the amount of money the injured worker is bringing into the home to maintain his economic standard. I am just making that statement, that is all.

Mr. Laughren: But you and I both know that if a worker is off for a considerable length of time on total temporary and the board says, "This person is not temporary any more. This is a permanent disability," he gets a 30 or 40 per cent permanent disability award plus a supplement. That is where the problem arises, because they go back to his previous earnings, or perhaps

as you say based on a year, and that is where he and his family really get hurt.

Mr. Cain: Mind you, there is another area of the act that benefits the worker because this particular supplement section is within the whole permanent disability section. During the last number of years when there have been ad hoc adjustments, they have been to the pension. As a result, we have increased the paying rate of the pension. We have also increased the supplement paying rate. We have had nothing to increase temporary total, as you know, because that was section 42. So there has been that kind of offset.

10:30 a.m.

For example, I just might add, if the accident happened in 1978 and we rate the person for pension in 1984, we will go back and take a year's earnings before the accident to set those permanent disability earnings. Having done that and created the pension, we are going to escalate that pension paying rate by any ad hoc adjustments in 1979, 1980, 1981, 1982 and 1983. We would do the same for any supplement that is being paid. To a degree, that is an offset and may even be better. That is questionable. It could be either way.

Mr. Laughren: But you do agree, in the example I am using, that there can be a very substantial reduction in that worker's income?

Mr. Cain: Certainly, I agree. There can be a difference, one to the other.

Mr. Laughren: Where would we make the change? That is what I am asking.

Mr. Cain: I would think it would have to be in the way in which we set the earnings basis, because that is what is causing it.

Mr. Laughren: In what section of the bill would we do that?

Mr. Cain: Are you referring to existing claims now? We are at section 135. If you are referring to the bill--

Mr. Laughren: That is what I am referring to.

Mr. Cain: It is unnecessary. That particular anomaly will not arise because of the way this bill tells us to set the earnings basis for new claims.

Mr. Gillies: Page 12, section 43.

Mr. Cain: To explain briefly, it describes how the Workers' Compensation Board must take the nominal rate in clause 43(1)(a). If we take that and we are not challenged or there is no application made, we will use that earnings basis for everything. However, if clause 43(1)(b) is brought into play by someone

applying to use a year's earnings--it might be the injured worker--in all likelihood that will increase the basis and that will be used for everything.

It may be if the employer or someone--it would have to be the employer--because of other reasons, that may lower the basis where it will be lowered for everything as well. So that situation you are describing will not arise under the new act.

Mr. Laughren: What about existing claims?

Mr. Cain: The method of setting the earnings basis for existing claims does not change. That is not a section that has been revised or deleted.

Mr. Laughren: Let me put my question to you a little differently then. How can we remove that anomaly for existing claims? Is this not the section we do it in?

Mr. Cain: Yes. I do not know whether legally--I think a lawyer would have to tell you whether you could incorporate it in there. Just off the top of my head, I would have thought it would be most appropriate in the earnings section. As you know, all existing claims exist, so earnings bases have already been set in them. It is not something we will be doing later. They are set.

If you want to suggest a change, whether it should be in section 135 or you would have to go to the earnings basis, I am not certain. I think it would be the method of setting the earnings basis.

Mr. Laughren: That is what causes the problem, the setting of the earnings basis. I do not want to go on too long with this one point when we have so much to do, but I really think this is an anomaly that should not exist. I think it is really unfair.

Mr. Riddell: I would like to know, Floyd, how this worker of yours bettered his salary by \$600 a month. Was it due to a lot of overtime for a short period of time? Did he go from the assembly line up to general manager? Was it a temporary increase in salary?

Mr. Laughren: No. They established the pension on a faulty earnings basis. Of course, the supplement is tied into that as well when the supplement is set. So they did one of two things. They went back too far to set the earnings basis or they used a period of time when he was not working. I think that is the real problem.

Mr. Cain: That is quite possibly the reason, or Mr. Riddell's approach could be right. For instance, in the four weeks before the accident, there might have been a lot of overtime, which caused it to go up. As Mr. Laughren is describing it, it may be there was a lack of work in the year before the accident that brought it down. These are both possibilities which happen.

Mr. Laughren: All I am looking for is a way that does not overcompensate this person, to keep the level the same as it was when he was on total temporary. The supplement is supposed to do that, as I understand it.

All I am saying is that if the total temporary was set at an appropriate level--and I believe it was--then when he goes on supplement with his pension it should not drop by a dramatic amount like that. You could understand a few dollars perhaps because of the way it is computed, but not that dramatically. I do not think that is the intention of the act and yet it is happening. When I wrote to the board, it said, "No, that is what they have to do."

Mr. Cain: Yes, it is the way we have to do it.

Mr. Laughren: It has to be changed. I do not think it is because the board is trying to pinch pennies in this case. I think it is the way the act is written. Am I right?

Mr. Cain: Yes, it is the way the act is written. Where the complication arises is that, as I said, it has been thought that a year's earnings is a fair representation of what the worker is receiving, but whether or not that is--

Mr. Laughren: That is true if the worker is working.

Mr. Cain: Yes, but as Mr. Riddell pointed out, there would be the odd case where some person would receive--

Mr. Laughren: The odd case really sticks it to that odd person.

Mr. Chairman, I do not like to abandon this when it can be rectified by a change in this section.

Mr. Chairman: Are you suggesting that you really do not want the word "shall" in Mr. Lupusella's amendment? You want to have a little flexibility in that. Would you rather see "may"?

Mr. Laughren: No, that is not the same point.

Mr. Lupusella: It is completely different.

Mr. Chairman: I am just trying to be helpful.

Mr. Laughren: This is totally different. I think the fact that you were not listening to my arguments is starting to show, Mr. Chairman.

I am asking people to assist in directing me as to what part to amend to rectify that problem so we can get on.

Mr. Lupusella: First, I guess we have to decide the principle of new injured workers and existing claims. Right?

Mr. Laughren: Yes. This will not happen under the new bill.

Mr. Cain: This will not happen under the new bill.

Mr. Lupusella: On the existing claims, what Floyd is raising is a real problem. Even though Doug has stated in very clear terms that when there is a legislative increase the pension goes up, so the supplement pension is true to a certain extent because when you reach the earning basis, what you are getting from the increase in your pension will lower or reduce your supplement pension.

Mr. Cain: It does not.

Mr. Lupusella: Why?

Mr. Cain: I am simply saying your supplement will go up.

Mr. Lupusella: Then it will be reduced because you cannot go above the maximum of the earnings basis. The majority of people do not reach the maximum. They are below the maximum of the earnings basis. Therefore, if the pension goes up as a result of a legislative change, what they might get as a result of the increase will be reduced on the supplement pension. It is a normal practice. Talk to workers and they will tell you, "I got a \$5 increase on my pension, but my supplement pension has been reduced by \$5." Where is the increase?

It is a saving process for the board and nothing else. Do not say that does not happen. That is what is applied. Even though Floyd is not blaming the board but rather the way the present act has been drafted, I think the principle behind that is to save money for the board and nothing else.

Mr. Laughren: We will see. If they refuse to change it, then yes, that is the correct interpretation.

How do we get out of this logjam, Mr. Chairman, because I really do not think you want to leave it the way it is?

Mr. Chairman: Mr. Hess, can you help us?

Mr. Hess: What you are directing yourself to, Mr. Laughren, would be in the existing act. I am looking at the blue one. If you look at section 45, it starts out by telling the board how to compute average earnings. I think that is what you were addressing in your conversation with Mr. Cain - subsections 1 and 2 - and you may recall that in Bill 101 there was a change made in those sections by section 43.

10:40 a.m.

Mr. Laughren: Right, well we are not talking about the new act, we are talking about--

Mr. Hess: No, I cannot deal specifically with whatever amendment you wish to propose, but there was a change made in language to some extent in subsection 43(1) on page 12 of Bill 101, which then directs the board how to determine average earnings. It would only apply for the purpose of new claims. I do not know whether that is of any assistance to you in that regard,

but I suggest that what you suggested to Mr. Cain would be amending part III by adding some amendment to existing subsection 45(1) of the act so that it would apply to old claims.

Mr. Laughren: You do not think we could do it in the section we are now debating.

Mr. Hess: I do not see how it would help to do it in this section, but perhaps Mr. Revell could be of assistance on that.

Mr. Revell: Unfortunately, Mr. Laughren and Mr. Hess, I have been involved in another little exercise here and I have not been able to follow the discussion. I am quite willing to be filled in.

Mr. Cain: I unintentionally misled Mr. Laughren. I am sorry. When I said it had to be the section dealing with earnings basis, you will notice that in subsection 43(1), which is the pension section and not the section we are dealing with here, but one of the subsections of that section, that is the section which states the pension is based on "75 per cent of his average weekly earnings during the 12 months immediately preceding the accident..." That is where we are charged to use one year's earnings under the current act, subsection 43(1), page 24. Section 45 that you just referred to is the one we use to set the temporary total earnings basis because it does not specify a specific period of time.

Mr. Laughren: Are you saying then that the board--

Mr. Cain: It would be in subsection 43(1) that you would have to consider a change.

Mr. Hess: It is subsection 43(1). I beg your pardon.

Mr. Chairman: In any case, it is not this particular clause?

Mr. Hess: No.

Mr. Chairman: It is not this clause. Your concern apparently cannot be addressed in the clause we are debating right now.

Mr. Laughren: There is nothing in this bill then that can address that problem, because it is the existing act; is that correct? I find that hard to believe.

Mr. Chairman: Has any amendment been made to subsection 43(1) of the old act?

Mr. Lupusella: We can deal with this one in subsection 135(5a), which deals with the supplementary pension and so on and the 75 per cent difference. Maybe we can do something there.

Mr. Chairman: Perhaps we can get some drafters working on an amendment, if subsection 5a is the appropriate spot.

Mr. Hess: Mr. Laughren was addressing the pension itself, not the supplement.

Mr. Lupusella: He is talking about two things here, about the supplementary pension--

Mr. Hess: The pension, not the supplement.

Mr. Lupusella: If there is an increase for existing claims, when the increase in the pension has taken place the increase in the supplement pension will be reduced by the same amount as the increase in the pension, because you have to reach the 75 per cent difference. The clause talks about the earnings of the injured worker at the time of the injury in case the earnings basis is lower than the maximum of the earnings of the injured worker prior to the date of the accident. That is when injured workers are penalized.

Mr. Laughren: For example, a worker gets hurt in 1970, goes back to work and has a permanent partial disability pension. There is a recurrence and the worker gets his temporary benefits based on the time of the recurrence, but his pension is based on the earnings at the time of the original accident. When he goes off temporary total and on to supplementary, that then goes back to the original earnings base at the time of the accident, rather than the current earnings base. That is where it is all falling apart. I would like to give the board the benefit of the doubt on this one because I do not think that is really the intention of the board. However, the way it is written, that is the way it comes out.

Mr. Chairman: We are in a bit of a dilemma, because I do not think the section we are discussing now is the appropriate spot. Do you agree with that?

Mr. Gillies: Mr. Chairman, if I may, we have put our heads together over here. I am going to ask Dr. Wolfson to explain this, but we believe Mr. Lupusella's concern is actually taken care of in section 135--not yours, Mr. Laughren, but the one Tony raised. Perhaps Dr. Wolfson can explain that.

Dr. Wolfson: It may have been the case, and indeed Doug Cain can elaborate on this, that where there was an increase in the pension on an ad hoc basis, the supplement may have been reduced in so far as the supplement was based on the pre-accident earnings rate and it was not adjusted for inflation under the old act.

Subsection 135(5) will allow for the board taking into regard the effects of inflation on the pre-accident earnings rate, and if that was the basis for the reduction in the supplement, that would no longer apply. There may have been other reasons why the supplement was reduced in those instances. If it was, the binding effect of not taking inflation into account on the pre-accident earnings rate would no longer be a variant.

Mr. Cain: Under section 135--and it specifies that it was not in section 43(5) of the old act--the inflation factor will apply to the pre-accident earnings.

Mr. Lupusella: What is it? The five per cent increase?

Mr. Cain: In this case, under section 133, it would be a five per cent increase for existing claims on the day this act is proclaimed.

Dr. Wolfson: Under section 135, Mr. Lupusella, the board will be empowered to have regard to the effects of inflation for the entire period between the accident and the time when the supplement is applied for. If that were a one-year period, the appropriate inflationary adjustment might be five per cent. If it were a 10-year period, of course, the appropriate adjustment would be much larger.

The board could have regard to the effects of inflation on the pre-accident earnings rate for the entire period since the time of the accident until the point at which the supplement is applied for.

Mr. Lupusella: I agree with you to a certain extent, but I know when an increase has taken place, there are particular clauses spelled out on the increases. Certain injured workers will not benefit from what you are telling me. I will find the specific clause which completely excludes certain groups of injured workers.

Mr. Revell: Mr. Chairman, with respect to the possibility of drafting an amendment, I still do not fully understand the problem that means the draft should be amended. I am quite willing to meet with whomever necessary if it is the committee's wish that an amendment be drafted for one of the members. However, trying to get my head around this problem in five minutes and come up with a solution to what looks like a very difficult problem would be unfair to me, unfair to the members of the committee and unfair to people who are collecting compensation to find something drafted on that basis. Over the lunch hour or something like that would give us a fighting chance.

Mr. Laughren: Can we hold that in abeyance then?

Mr. Chairman: I do not think this concern affects section 135(5). Or does it?

Mr. Laughren: Except that is the tradition anyway.

Mr. Chairman: There is no point in standing this down if it is not going to be in this clause where the amendment is to be inserted.

Mr. Cain: Mr. Revell is not certain.

Mr. Lupusella: I have an amendment with respect to section 135(5).

Mr. Chairman: All right. We do have an amendment from

Mr. Lupusella. Let us deal with the amendment.

10:50 a.m.

Mr. Laughren: Okay. Can we have an agreement that we will stop debate on this problem that I have raised as long as it does not preclude taking a look at it when we have had a chance to see where it would be inserted? Is that fair?

Mr. Chairman: Yes, it is, and that will be determined over the noon hour. Let us deal with the amendment changing the two "mays" in the clause to "shall".

Mr. Lupusella moved that section 135 of the act continuing subsection 43(5) of the act, as set out in section 37 of the bill, be amended by striking out "may" in the third and fifth lines, and inserting in lieu thereof "shall."

Those in favour of the amendment? Those opposed?

Motion negatived.

Interjection.

Mr. Chairman: Yes, it was defeated.

Mr. Lupusella: At any rate, Dr. Wolfson's point is that on page 26 of the present act, there is a specific note, which is section 44, and it deals with how average earnings are to be computed, which I think deals with the concern raised by Mr. Laughren.

Section 44 of the act, as re-enacted by the Statutes of Ontario, 1982, chapter 61, subsection 8(2), "applies to accidents occurring on and after July 1, 1982, but nothing therein entitles a person to claim additional compensation for any period prior to July 1, 1982." There is that type of note, plus--I do not have, for example, the last bill, Bill 99, in front of me--certain clauses that exclude injured workers from receiving further benefits.

Even though section 44 does address my concern or Mr. Laughren's concern, besides the inflationary five per cent increase that can be applied, there is nothing else that entitles injured workers to further benefits when there is a legislative amendment taking place.

Dr. Wolfson: I think we will need Mr. Cain, and he seems to have stepped out for a moment--oh, here he is--to elaborate on the circumstances that might lead to a reduction in the supplement, such as Mr. Lupusella has indicated.

There may be other reasons why that supplement was reduced. I was directing my remarks to cases where the supplement may have been reduced because of a barrier established by using the pre-accident earnings rate unadjusted for inflation and that condition would no longer obtain under the new bill.

Mr. Lupusella: In fact, there is another note of the present act, subsection 45(1), which again excludes injured workers from receiving further benefits prior to the time when the law has been enacted. So, do not tell me that everyone gets benefits when legislation is introduced in this parliament. It is nice to claim a big fanfare of increases and so on when a lot of people are completely cut from the increases.

Mr. Chairman: I guess we should stand this down in case whatever amendment is going to be introduced falls under this subsection.

Mr. Revell: From whom will I be receiving the instructions?

Mr. Lupusella: The instruction is that during lunchtime you have to get together with Floyd and draft a possible amendment.

Mr. Chairman: Okay. Then we will have that brought in after lunch. We will send out for a sandwich for you.

Mr. Laughren: Thank you.

Mr. Chairman: I said that to our legal counsel.

"(5a) In calculating the amount of the supplement under subsection 5, the board shall have regard to the difference between the average earnings of the worker before the accident and the average earnings after the accident and the compensation shall be a weekly or other periodic payment of 75 per cent of the difference, but the total of such supplement and the award under subsection 1 shall not exceed the like proportion of 75 per cent of the worker's pre-accident average earnings, and the board shall have regard to the effect of inflation on the pre-accident earnings rate and to any payments the worker receives under the Canada pension plan."

Mr. Lupusella: Can I get a clear indication of why it is 75 per cent and not 90 per cent? Are we dealing with existing claims?

Mr. Cain: Everything from part III on refers to existing claims only.

Mr. Lupusella: Mr. Chairman, I will move an amendment, because the existing claimants are the big losers on the level of benefits.

Mr. Sweeney: The 75 per cent is gross, I think, not net.

Mr. Cain: That is correct, 75 per cent of gross, just as it is today.

Mr. Sweeney: We are talking about two different things, because 90 per cent of net and 75 per cent of gross are two very different things.

Mr. Lupusella: I see. Okay.

Mr. Chairman: Shall it carry?

Mr. Sweeney: At least I am assuming that is what it is.

Mr. Chairman: That is precisely what it means. Shall it carry? Carried.

"(5b) Notwithstanding subsections 1 and 5, where the impairment of earnings capacity for an older worker is significantly greater than is usual for the nature and degree of the worker's injury and, where in the opinion of the board, the worker cannot return to work and is unlikely to benefit from a vocational rehabilitation program which would lead to employment, the board may supplement the amount awarded for permanent partial disability with an amount not exceeding the old age security benefits that would be payable under section 3 of the Old Age Security Act (Canada), and amendments thereto, as if the worker were eligible therefor, and such supplement may continue until the worker is eligible for such old age security benefits or until the worker returns to employment."

Mr. Sweeney: The net effect of this is to transfer to existing claimants the same older worker principle we have under the new act. Is that right? I do not see any other difference in wording.

Mr. Lupusella: Can Doug open the policy book of the Workers' Compensation Board and give us the interpretation of impairment of earning capacity which is greater than is usual for the nature and degree of the worker's injury, so we can find out what kind of definition you have?

Mr. Cain: Yes. I would be happy to read the policy to you. The subsection 43(5) to which we are referring is the same.

"Provides authority to supplement a permanent disability award up to the like proportion of 75 per cent of the worker's average weekly earnings during the 12 months immediately preceding the accident or such lesser period as the worker has been employed.

"In determining whether or not the impairment of earning capacity is significantly greater than is usual for the nature and degree of the injury, the evaluation is to be based on the worker's ability to perform the pre-accident occupation or an occupation with comparable income.

"In making this determination, consideration must be given to the whole person concept. Regard must be had to the occupation affected by the presence of the permanent disability and whether the disability by itself or combined with such factors as age, education, ability to communicate, availability of employment and the physical requirements of the pre-accident occupation precludes the worker from returning to that employment.

"Earning capacity is interpreted to mean the ability to earn, as usually demonstrated by the amount earned during the 12 months immediately preceding the accident or such lesser period as

the worker has been employed and expressed as average earnings prior to the accident."

Mr. Sweeney: It is possible for us to see a copy of that, or is it confidential?

Mr. Cain: No. These books are public.

Mr. Sweeney: Just that one phrase or description.

Mr. Cain: By all means.

11 a.m.

Mr. Lupusella: Am I correct then, based on what you read, in saying that if an injured worker is affected by a 10 per cent disability pension, which is a reduction of 10 per cent of 100 per cent of the probabilities of performing his or her own work, the injured worker might not get a supplement pension because the degree of disability is not high enough and he can go back and perform the same kind of job which he used to do prior to the time of the accident and because he can make the same amount of money as he used to make even though he is affected by a 10 per cent disability award?

Mr. Cain: If the worker, as a result of his disability, is capable of performing his pre-accident occupation, you are quite right, we will not pay a supplement. It is not a question of its being a 10 per cent permanent disability award as opposed to 40 per cent; the question there is, can the person with that disability do his pre-accident occupation? If he can, you are quite correct: a supplement will not be paid.

Mr. Sweeney: That is not the purpose of a supplement.

Mr. Cain: That is right.

Mr. Lupusella: But in most cases this type of definition is allowing the board to deny supplementary pensions in a discriminatory way for injured workers.

I want to bring you the example of an electrician who received a 10 per cent disability award for his back. He cannot climb a ladder any more because of the weight and all the tools he has to wear around his back and so on. I lost the appeal for the supplementary pension because of this specific clause on earning capacity. Because he speaks English, the board is of the opinion, as Doug read through the interpretation of this definition, that he can make the same amount of money as he used to make before the time of the accident.

I lost the appeal, and in most of the cases the board does not grant supplementary pensions to people who are affected by a 10 per cent disability award or less than that, besides the exceptions that we as a committee had the opportunity to see with a worker on a six per cent disability award who received a supplementary pension.

Mr. Chairman: I am having trouble trying to relate your discussion right now to subsection 135(5b), which we are discussing. If you have concerns, they should have been raised under subsection 135(5a), which we have already carried. We are talking about the older worker here now.

Mr. Lupusella: But even with the older worker we are faced with the same definition of "impairment of earning capacity," plus the discretionary power the board has that it "may" grant a supplementary pension. The board does whatever it wants to do.

Mr. Chairman: Having received the definition from Mr. Cain, are you prepared to make an amendment on the--

Mr. Lupusella: I thought the minister had the opportunity to review my concern, unless I am completely wrong.

Mr. Chairman: The minister was not here when that discussion took place.

Hon. Mr. Ramsay: Mr. Chairman, to Mr. Lupusella, my officials have checked Hansard, and we did not make a commitment to you in that respect.

Mr. Lupusella: I will have to go through the record myself then.

Mr. Chairman: Perhaps you can get your research people on it.

Hon. Mr. Ramsay: Yes. If you are able to indicate to me that I did, I would be--

Mr. Lupusella: I do not have the answer. I will review it during lunchtime.

Mr. Chairman: Shall subsection 135(5b) carry? Carried.

Subsection 135(5c) says: "A supplement awarded under subsection 5b shall be a weekly or other periodic payment and the total sum of such supplement and the award under subsection 1 shall not exceed the like proportion of 75 per cent of the worker's pre-accident average earnings and, in calculating the amount of the supplement, the board shall have regard to any payments the worker receives under the Canada pension plan."

Mr. Laughren: I am nervous about what this means. If it means what I think it should mean, then my mind is at ease. I think it should mean that the board will take a look at what that person's retirement income would be. It will add together old age pension, the WCB pension and the Canada pension. If, for argument's sake, the combination of those three comes to \$800 a month, and if the worker at the present time is getting only \$200 a month on his WCB pension, then the supplement would be \$600 a month.

In other words, the Canada pension would be computed as

retirement income, so you would not be subtracting Canada pension, you would be adding it to what his retirement income would be. Is that correct?

Mr. Cain: To my knowledge, the intention here is to deduct the Canada pension plan benefit the worker may be receiving during the interval we are talking about.

Mr. Laughren: You are talking about when the worker is already getting Canada pension. Is that what you are saying?

Mr. Cain: Yes. When you are referring to the older worker--

Mr. Sweeney: Under 65.

Mr. Cain: --under 65--

Mr. Laughren: Who is getting Canada pension disability.

Mr. Cain: --if he is receiving a Canada pension disability award, that will be deducted from any supplement that would be payable.

Mr. Laughren: But the worker would be getting that Canada pension when he or she retired.

Mr. Cain: No. This is a disability pension he is receiving. We are talking about giving them a supplement up to the limit of an old age security pension, but they are not getting that pension. They will not get it until they are 65. They are getting the same Canada pension plan disability benefit as would any other worker here, where it is stated that it is deducted.

Mr. Laughren: You are assuming that worker is getting Canada pension disability.

Mr. Cain: If they are getting it, we deduct it. If they are not, of course, it is not taken off.

Mr. Laughren: If he is not getting it, does that mean you would add on to the supplement what that worker would be getting with his Canada pension after retirement?

Mr. Cain: No. Because what we will--

Mr. Laughren: You have it both ways. How does that make sense?

Mr. Cain: We are going to compensate them up to the level of the old age security benefits they would be entitled to at the age of 65.

Mr. Laughren: But they would also be entitled to Canada pension at age 65. Right?

Mr. Cain: That is their Canada pension, is it not?

Mr. Laughren: No.

Mr. Cain: We are talking about the disability benefits they receive under CPP when we would be paying this.

Mr. Laughren: Let me start over again. If a worker is not getting Canada pension benefits, because he is not classified as totally disabled by Canada pension and he is not 65, you would look at the difference between his WCB pension and what he would be getting at retirement. That is the supplement, right?

Mr. Cain: That is correct. As long as it does not exceed 75 per cent.

Mr. Laughren: All right. All I am asking is, when you compute that, will you make sure that worker's post-retirement income includes old age pension, Canada pension and WCB pension, and pay the difference?

Mr. Cain: No. We would do exactly what the section states, and to be precise, "an amount not exceeding the old age security benefits that would be payable under section 3 of the Old Age Security Act of Canada."

Mr. Laughren: Why would you pretend that is matching the worker's post-retirement income, when you are not including Canada pension? The more I look at this, the more I see how you are trying to get it both ways.

You cannot use Canada pension to penalize the workers in one section and then in the next--maybe you are being consistent; you are deducting Canada pension for the computation of benefits and now you are saying you will not include Canada pension as post-retirement income. How can you do that?

Mr. Cain: I am just reading to you what the act says.

Mr. Laughren: I am not saying it is you. How can the minister do that? How can you not include Canada pension as post-retirement income when you are using it in every other opportunity to reduce the worker's benefits? That is completely beyond my comprehension. Surely that is not your intention.

11:10 a.m.

Mr. Sweeney: Could I try to come at the same point to the minister?

I have had a case very recently of a 63-year-old man who fits this description. My understanding of the explanation that was given to me is that he has reached the point where rehabilitation is fruitless. In other words, he has two more years and it is not practical to rehabilitate him. This is the description I got from his rehabilitation officer. It is not mine.

There is no point in trying to get this guy a job. They understood that the purpose of this was to put him into a position

over the next two years that would be equivalent to his position when he reaches 65. It is a balancing act.

That takes into consideration what he is able to earn through his pension, what he would be getting at 65 through old age security, what he would get at 65 through Canada pension. It is a stopgap measure to give roughly equivalent earnings up to 65 to what he will be earning once he turns 65, since there is no other way to get money to him.

If that explanation is correct, we know that when he reaches 65, he will be eligible for both his Canada pension and his old age security. This is quite a different situation from much younger people earning a Canada pension disability. We have been through all that. As far as this bill is concerned, that is over and done with. We are not going to make changes there.

Here we are talking of a deliberate attempt to match earnings before and after age 65. Under this circumstance there is not a practical application to deducting the Canada pension disability. As soon as he turns 65, he will be eligible for Canada pension. What both Mr. Laughren and I are trying to argue is that if you take Canada pension off in this one instance--that is all I am arguing for--then you are defeating the whole purpose of this section. It is contradictory and inconsistent.

If someone has another way of viewing it, I would be quite prepared to hear it. In the way it was explained to me, that is the intention.

It may be that there are some situations where people younger than 65 are not getting a Canada pension disability. There may be the odd case like that, but where they are getting it, then it should not be a deducting factor if there is any consistency here.

Dr. Wolfson: I am not sure I can totally address the concern that Mr. Sweeney raises, but may I clarify what the intent of this provision is. It is simply an adjunct to the supplement provisions for permanent disability pension which in all other respects are restricted to cases where rehabilitation is both possible and potentially effective. For older workers, however, that is often not the case.

The intent of this section is to remove that bar to receiving a supplement that is constituted by having the rehabilitation requirement in effect. For older workers, we are simply seeking a mechanism for providing some supplement provision without requiring them to be involved in a rehabilitation program leading to future employment.

The intent of this section is not for these cases to provide an equivalent amount to what they would receive after age 65. That is neither the intent nor the effect of this section. It is simply to provide a standard supplement for these older workers where they cannot involve themselves in an effective rehabilitation program. The amount of the supplement indicated is equivalent to the statutorily set amount of the old age security pension.

Undoubtedly, some of these workers on attaining age 65 will have other sources of retirement income besides that statutory amount, but this special supplement has been set at the statutory amount and is not intended to bring those pre-retirement earnings or incomes totally up to the post-retirement level.

The Acting Vice-Chairman (Mr. Havrot): Is there any further discussion under subsection 135(5c)?

Mr. Sweeney: What the net effect will be, then, Dr. Wolfson--if I can just use three figures--say, for the sake of discussion, that we are talking about this man getting \$100 from his disability pension worker's compensation, \$100 from Canada pension disability and \$100--although it is more; it is \$200 and something--from old age security. That is \$300 potentially if he gets all three.

The net effect of what we are doing in this section is to say that, because he is getting \$100 in Canada pension disability, that will in effect offset the \$100 he is going to get from old age security, so therefore, in fact, he is not going to get any old age security.

That is the net effect of it. One just cancels the other right out.

Dr. Wolfson: I do not think that is quite accurate, Mr. Sweeney, in so far as the Canada pension plan disability award is not subtracted from the supplement award at all. It is taken into account in the computation of net earnings, so it would be deducted from gross earnings before the taxable earnings would then be computed. The effect would not be equivalent to offsetting--

Mr. Sweeney: You are not talking about a dollar-per-dollar offset.

Dr. Wolfson: It would not be a dollar-for-dollar offset.

The Acting Vice-Chairman: Is there any further discussion under subsection 135(5c)? Carried? Carried.

Subsection 135(5d), the effect of CPP, says, "Notwithstanding subsection (5a) or (5c), the fact that a worker is receiving payments under the Canada pension plan shall not be a bar to receiving a supplement under subsections (5) or (5b)."

Mr. Lupusella: This is a contradiction of principle because subsection 135(5d) states that it is not barred, but at the same time it will be deducted, so I really do not understand the rhetoric of this subsection.

Mr. Gillies: This just makes it consistent with the other subsection. I am just trying to find it.

Mr. Lupusella: I am sure any lawyer (inaudible) of this subsection.

Mr. Gillies: There was another overriding subsection in the act that noted that CPP was not a bar to receiving benefits, was there not?

The Acting Vice-Chairman: Can we have an opinion on that from one of our legal experts? We are discussing subsection 135(5d) right now, and Mr. Lupusella is--

Mr. Laughren: We have to send out for one.

Mr. Lupusella: I said it is a contradiction of the principle, because subsection 135(5d) states that, "receiving payments under the Canada pension plan shall not be a bar to receiving a supplement under subsections (5) or (5b)," but at the same time it is deducted. Am I correct?

Mr. Cain: It is not a bar.

Mr. Lupusella: It is not a bar, but CPP is deducted in the calculation of the supplementary pension.

Mr. Cain: It will be deducted, yes.

Mr. Lupusella: So for me it is a contradiction to have this subsection because, although he is entitled to receive a supplementary pension, at the same time you take away the amount of money the injured worker will be receiving under CPP. For me it is a contradiction of the principle to have this subsection.

Mr. Cain: The bar is just giving the board clear direction not to stop a person from receiving a supplement because he is receiving CPP.

11:20 a.m.

Mr. Gillies: I just found it, Mr. Chairman. This is consistent with subsection 45(9): "Notwithstanding subsection 40(3)...the fact that a worker is receiving payments under the Canada pension plan shall not be a bar to receiving payments under clause 40(2)(b)."

I appreciate what you are saying, Mr. Lupusella, but I would think that a subsection like 135(5d) would almost be necessary to be consistent with that earlier and overriding clause.

Mr. Laughren: Do not give us nonsense about consistency, especially when it applies to the Canada pension plan. You have thrown away consistency by the previous subsection 5c, because you do not consider it to be valid when you are computing post-retirement earnings, but you consider it valid when every single opportunity arises to reduce the worker's benefits. Do not talk to me about consistency any more.

Mr. Gillies: You could make the same argument on section 45.

Mr. Lupusella: We made the same argument, so our position is consistent. The question is, it is hard for us to

understand the criteria spelled out under this subsection. You give the impression that he is entitled, when in fact you take away, in the calculation of the supplementary pension, what the injured worker is receiving from the Canada pension plan. It is a contradiction itself. Any lawyer in Ontario would laugh at that.

Mr. Laughren: It is really mean-spirited.

Mr. Lupusella: I have not seen lawyers laughing, but--

The Acting Vice-Chairman: Is there any further discussion under subsection 135(5d)? Shall subsection 135(5d) carry?

Interjections: No.

The Acting Vice-Chairman: All those in favour of subsection 135(5d) please signify. All those against please signify. Carried.

Section 136 of the act as set out in section 37 of the bill says, "Section 50 and sections 55 to 86r of this act, as amended, repealed, enacted or re-enacted by sections 13 to 32..." There is an amendment.

Mr. Gillies moves that section 136 of the act as set out in section 37 of the bill be amended by striking out "86r" in the first line and inserting in lieu thereof "86s."

Mr. Sweeney: There is no 86s.

The Acting Vice-Chairman: There is now.

Hon. Mr. Ramsay: That is the French-language one.

Mr. Sweeney: I am sorry. That is the one we did just before that.

The Acting Vice-Chairman: Is there any discussion under this amendment?

All those in favour of the amendment, as read, will please signify.

All those opposed will please signify.

Motion agreed to.

The Acting Vice-Chairman: Shall section 136 of the act as set out in section 37 of the bill carry?

Mr. Lupusella: Mr. Chairman, I am sorry, but referring to section 50 and sections 55 to 86r of this act, are we talking about Bill 101 or the present act?

Mr. Cain: The current act.

Mr. Lupusella: The current act. Let us go back then to section 50 of the present act, which talks about spouses not leaving Ontario. Under Bill 101, if a spouse goes back to Italy, for example, she or he will be receiving the benefits that she or he is entitled to; am I correct or wrong?

Mr. Cain: In your example, section 50 does not refer to a spouse receiving a pension because her husband is deceased due to an accident. Section 50 refers to diverting the funds of the injured worker to a spouse who is no longer living with that injured worker.

Mr. Lupusella: So we are not talking about deceased injured workers.

Mr. Cain: Not at all; that has nothing to do with it.

Mr. Lupusella: What about section 52 of the present act, which has also been affected by the new amendments to Bill 101? That means the injured worker will not have the initial choice of a doctor any more; am I correct?

Mr. Cain: Excuse me. Section 52 has not been repealed. There is section 50 and then you go on to section 55. Everything stays in up to section 55.

Mr. Lupusella: Okay; so section 50 and section 55?

Mr. Gillies: Then section 55 through to section 86.

Mr. Lupusella: So section 52 was not amended, repealed or anything?

Mr. Cain: No, nor section 53 or section 54.

Mr. Laughren: Mr. Lupusella makes a good point here, though. I assume, because section 136 of this bill deals with sections 55 to 86r of the existing act, that all those sections are now open for debate under this section.

Mr. Lupusella: There are certain things that are extremely beneficial to injured workers, and I want to make sure that injured workers will not lose so much from the present act to get into a new act. In fact, under the old act, they had certain rights that have been taken away as a result of Bill 101.

I would like to go through each section of the old act which has been amended by the new act--"amended, repealed, enacted or re-enacted by sections 13 to 32 of the Workers' Compensation Amendment Act, 1984." I think it makes sense to go through the content of all those sections which have been affected by it.

Mr. Revell: I would point out that in fact we either have gone through the very provisions that are open here or will be. There are many of them that were stood down. Essentially, the amendments you are dealing with in section 136 are sections 13 to 32; these are the ones we have been dealing with for the last--

Mr. Sweeney: Two years.

Mr. Revell: It just seems that way. I just throw that out for clarification. I cannot make any comment; it is a procedural matter.

Mr. Lupusella: I can read it for myself, but if there is something I am extremely concerned about in specific clauses of the present act, I would like to have the option to raise it. In the meantime, we can proceed with Bill 101.

On section 38:

Mr. Chairman: Section 38 reads, "Where an application or appeal has been heard by the board--"

Mr. Laughren: Did you stand down--

Mr. Kolyn: No, no. We passed it. He just wants the right to look at it.

Mr. Sweeney: And to reopen it if he finds something that is covered in the existing bill.

Mr. Chairman: Section 136 was carried.

Mr. Havrot: That is right.

Mr. Chairman: It was carried. We are now on section 38.

"Where an application or appeal has been heard by the board or a panel thereof pursuant to sections 75 and 77 of the Workers' Compensation Act, as those sections read immediately prior to the coming into force of this section, and a final decision or action thereon has not been made or taken before the day this section comes into force, the board or a panel thereof may carry out and complete any duties or responsibilities and exercise any powers in connection with the application or appeal as though this act had not been enacted."

Mr. Sweeney: I read this earlier and my understanding is that any ongoing application can be dealt with under the old legislation, even after this new legislation takes effect. Is that the correct interpretation?

In other words, what we are saying is that the new act does not automatically trigger in for existing claims which are still in process. That is what it says.

Mr. Revell: That is my interpretation. Of course, with the reorganization of the corporate board, a number of drastic things happened. For example, there is that provision that terminates the existing members of the board for certain purposes.

This particular provision will allow, as I understand it--it was certainly my intention when drafting it--that these people could complete their duties so people would not be starting all over again halfway through the process.

11:30 a.m.

Mr. Sweeney: What I am thinking about is the one on which we had a fairly lengthy discussion--Mr. Cain will recall--that the appeals tribunal is going to replace the existing appeal panel.

Mr. Cain: Correct.

Mr. Sweeney: My understanding was that any case that had not yet reached that stage after this act was passed would, from that point on, be constituted as an appeals tribunal rather than a panel.

Mr. Cain: Correct.

Mr. Sweeney: But this act seems to say that is not necessarily so; that if the case had been started, the process had been started, then this legislation gives the board the right to proceed under the old act.

Mr. Armstrong: I think that is only where the application or appeal has been heard in part. If you look at the first sentence of section 38, it says, "Where...has been heard by the board or a panel." Where the hearing has not yet commenced, the appeal as created by the new act could come into effect and take it.

Mr. Sweeney: Mr. Armstrong, the word "or" there in the first line distinguishes between application and appeal. The application is literally the first step.

Mr. Armstrong: No, I think the "or" is different, "has been heard by a board or a panel thereof".

Mr. Chairman: No. He is saying in the first part, "an application or appeal"; it is the "or" in the first line.

Mr. Sweeney: Yes.

Mr. Armstrong: Yes, "Where an application or appeal has been heard...." I think the operative words are "has been heard." So it has to have got into the system to the extent that the hearing has commenced in order for the old mechanism to trigger.

Mr. Laughren: Why is the word "application" in there then?

Mr. Cain: There are some items that go before an appeal board that might not be called an appeal as such; they are applications. I am not certain--I am certainly subject to correction here--but I believe under section 15, for example, wherein the board is asked to determine whether someone is a worker, I do not believe that is an appeal; that is an application. I believe the word is intended to give a complete understanding of the type of thing that is before an appeal panel.

Mr. Sweeney: All right. Would it be proper to interpret this to mean that if at any stage of the process, regardless of

what it is, that particular stage had already begun, the board is given the authority to continue that stage under the old process, but the next stage, whatever it is, which has not yet begun, would have to be triggered in by the new procedures? Would that be correct?

Mr. Cain: I may be misunderstanding you.

Mr. Sweeney: All right. Let us just say the normal process is that a claim is put in; under the present act, it may go to the adjudicators, or it may go to an appeal panel, which will be replaced by the appeals tribunal.

Assuming that it is already at any one of those stages, what I think this means is that because this legislation has been enacted, that does not mean that wherever it happens to be right now is suddenly dropped and started all over again, but rather wherever it happens to be right now can continue that way but, as soon as you take the next step, then you have to follow this legislation.

Mr. Cain: Yes, except it is specifically limited to claims that have been heard before an appeal board and it has not made its decision as yet. Therefore, they are allowed to continue the process until they make their decision because they have held a hearing.

Mr. Sweeney: A final decision or action has not been taken.

Mr. Cain: Because the appeal board as it is constituted today disappears on the day of proclamation, there has to be some interim step where, if it has heard a case and has not made a decision, it can finish with it.

Mr. Sweeney: All right.

Mr. Cain: That is what it refers to.

Section 38 agreed to.

On section 39:

Mr. Chairman: "Clause 9(b) of the Human Rights Code, 1981, being chapter 53, is amended by striking out 'or' at the end of subclause (iii), by adding 'or' at the end of subclause (iv) and by adding thereto the following subclause:

"(v) an injury or disability for which benefits were claimed or received under the Workers' Compensation Act."

Mr. Sweeney: I do not have a copy of the Human Rights Code. Could someone tell me the significance of this?

Mr. Hess: It would generally include a worker who claimed to receive compensation.

Mr. Gillies: So this clause now makes having been a recipient of benefits under the Workers' Compensation Act a ground for a claim of discrimination?

Mr. Hess: Yes.

Mr. Gillies: Very good. It is about time.

Mr. Sweeney: The present subclause (iii) deals with a learning disability, as Mr. Hess has explained to us, and we are adding this section with respect to injured workers.

I see. The effect of the "or" is to make it possible to add another section. That is all.

Mr. Hess: Yes.

Mr. Sweeney: That is all right.

Section 39 agreed to.

On section 40:

Mr. Chairman: "This act comes into force on a day to be named by proclamation of the Lieutenant Governor."

Mr. Laughren: This presumably would all happen after this bill becomes an act and the law. I think the minister said earlier in these hearings that he wanted to have this finalized and brought before the Legislature this fall. I believe that was his intention. When the bill comes back into the Legislature, I seek guidance here on what the procedure is. It has received second reading in principle. When it comes back, does it come back strictly for third reading or does it come back for debate?

Clerk of the Committee: It comes back for third reading or, if the members so wish, it can go back to the committee of the whole House for further debate and certain amendments.

Mr. Laughren: I see.

Clerk of the Committee: If not, then it will go directly to third reading.

Section 40 agreed to.

On section 41:

Mr. Chairman: "The short title of this act is the Workers' Compensation Amendment Act, 1984."

Section 41 agreed to.

Mr. Chairman: The minister has a statement on the numerous items we have stood down for clarification purposes.

Mr. Sweeney: Is this the one sentence that says, "We agree with everything the opposition members have proposed"?

Mr. Chairman: With qualifications.

Hon. Mr. Ramsay: It is one sentence saying, "We disagree."

Mr. Chairman: The hope of the minister is that this statement will be read now before lunch to give us the lunch hour to consider it.

Hon. Mr. Ramsay: May I ask if Mr. Lupusella is coming back?

Mr. Chairman: Or if you have to read it twice, in other words.

Hon. Mr. Ramsay: I would like to read it in his presence, if possible.

Mr. Chairman: Order.

11:40 a.m.

Hon. Mr. Ramsay: Mr. Chairman, ladies and gentlemen, before I get started with a statement that will take me approximately 30 to 35 minutes to read and which will be distributed later along with some amendments, I would like to say something; and this is not a setup, as you might think, or my trying to con you in any way.

On Monday, while the deliberations were going on, I turned to Dr. Wolfson and made a comment that I meant at that time and I would like to express it publicly now. The comment I made to Dr. Wolfson was that this is a textbook example of the value of opposition members. I was referring to the work, the dedication and comments and so on that have been made by three members of this committee. I am referring to Mr. Sweeney, Mr. Lupusella and Mr. Laughren. I meant it very sincerely.

That is one of the reasons, knowing how dedicated they are to this bill and how dedicated they are to their roles as opposition critics, we took into account the various comments and suggestions made and the items that were stood down. We did not just address them as, "Fine, we will look at them, and then we will come back in and just use the majority of this committee to put them through."

I do appreciate and I commend these three members for their efforts, and I will say that publicly at the right opportunity. There has been a valuable contribution made by the three persons I have mentioned. A valuable contribution was made by the committee but particularly by those three persons.

I would like at this time to take up a number of issues that have been raised by members of the committee over the past several days pertaining to various sections of the bill upon which voting has been deferred.

Before commencing on my detailed response, let me say that I have found the debate we have engaged in most helpful in providing an opportunity for clarifying certain of the concepts involved in the proposed legislation as well as in bringing to my attention potential difficulties that may arise from its implementation.

As I have noted on several occasions, Bill 101 represents only the first phase of reform of the Workers' Compensation Act. I will return to this point later in my remarks. Suffice it to say, however, the points that have been raised during these proceedings will be helpful not only in clarifying provisions of Bill 101 but also in refining the agenda for and design of phase 2.

To turn now to the individual matters that have been raised by various members of the committee, let me commence by dealing with some particular suggestions that have been made and with which I concur. To address most of these points, I will be introducing appropriate amendments.

First, there was a question about the definition of "worker" and its relevance to those family members employed by an employer, particularly those working on family farms. In this instance, I do not believe the bill as drafted requires amendment, although I agree with the expressed view that employed family members should be entitled to compensation if injured. This is provided in the bill.

Any family member who has a contract of service, written or otherwise, is included under the definition of "worker." I am informed by legal counsel that such a contract of service does, of course, require consideration to be paid to the worker and that some form of remuneration would, therefore, be required. Where this is the case, however, both children and spouses would qualify as workers. Such is, indeed, the current policy of the board with respect to children of employers.

Heretofore, employed spouses have received different treatment and have been required to seek personal coverage in order to qualify for any compensation entitlement. I understand, however, from board officials that this policy will now be changed to afford spouses equal treatment with children in terms of Workers' Compensation Board coverage.

Second, concern was raised about the section dealing with burial expenses. I would note that the proposed language in Bill 101 represents a marked departure from the provisions in the current act which, instead of providing a floor for burial allowances, establish a ceiling. In fact, the ceiling for allowances in the current act is \$1,500.

By way of contrast, Bill 101 provides for a minimum amount of \$1,500 to be paid for burial expenses. The intent of this section is to ensure that the board can pay for expenses over and above \$1,500 where they are necessary and reasonable. I am informed by board officials that such is indeed their intended policy.

It may be, however, that the precise language of the relevant section could be interpreted as being unduly restrictive on the board's ability to pay reasonable expenses as they may vary from community to community. A random survey undertaken by my officials has established that the \$1,500 minimum figure is indeed appropriate in some parts of this province, though perhaps not in others.

Bill 101 is designed, as I have said, to allow the board to exercise its discretion in compensating reasonable expenses, and it is not our intent that those amounts be standardized across all potential claimants. Accordingly, I am prepared to move an amendment to section 9 of the bill that would provide for the necessary discretion to be exercised by the board in compensating reasonable expenses.

The member for Nickel Belt (Mr. Laughren) raised serious questions about section 43(7) of the act dealing with calculation of wages at recurrence of injury. As I understood it, his primary concern was with the case of a worker who, having been injured and thereafter re-employed, was unemployed at the time of recurrence.

In such a case, board officials have indicated that the effect of the provision would be to use as a basis of compensation the earnings rate at the time of the original accident, despite the fact that the earning rate during the period of re-employment might have been higher. While this provision in Bill 101 is simply a re-enactment of the existing statutory provision, I believe that this anomaly should be addressed. I will, therefore, be introducing an amendment to remove this potential inequity from the act.

Moving to the next item, it was suggested by the member for Kitchener-Wilmot (Mr. Sweeney) that it would be desirable to amend section 13 of the bill with respect to the power of the board to divert compensation to a worker's spouse or children in certain circumstances. If I am correct, the honourable member's concern was that the board should be empowered to make such a diversion only in order to comply with a court order.

While I am sure that all would agree that where a worker's spouse or children are abandoned, it is appropriate that compensation payments be diverted to the support of the worker's dependents, I concur that the appropriate procedure for determining the necessity and amount of such a diversion should lie with the courts. I am, therefore, prepared to move an amendment to section 13 of the bill in order to restrict the power of the board to divert compensation payments to those cases where a court order has been obtained.

11:50 a.m.

A legitimate concern was also raised regarding the confidential treatment of information received by employers or their agents under section 77 of the act, as amended by section 28 of the bill. This concern is, of course, particularly relevant with respect to medical information.

Although I am certain that most employers would take for granted the need to treat such information confidentially, I agree that a statutory provision to ensure this practice is appropriate. I am therefore introducing an amendment to this effect.

There are two other issues which have been raised on which I would like to comment, since I may wish to return to them at a later stage when the bill is considered by the committee of the whole.

First, with respect to section 5 of the bill, a question was raised about the liability of directors who are not executive officers. The concern raised was that while section 5 provides protection against civil action for executive officers of companies, as well as employers, the same protection may not be available to directors.

I am informed by legal counsel that it is extremely unlikely that directors who do not hold executive positions would in any event be held liable for the negligent acts of the corporation. In addition, including an explicit exemption for directors in this act may have unforeseen and undesirable implications for the status of directors more generally in actions at common law or, indeed, under other statutes. Since this is a complicated legal issue, my intention is to confer with my colleague, the Attorney General (Mr. McMurtry) and if it is deemed appropriate, to insert a provision in the bill to protect directors against civil action. We will so provide at the stage of review by the committee of the whole.

Second, I would like to touch on an item upon which agreement was reached in this committee, but which may warrant reconsideration. I refer to the subsection of section 3 dealing with compensation in the case of serious and wilful misconduct of a worker.

While I am sympathetic to the concern about differentiating between serious and other impairments, and the restriction of the existing act to cases of death and serious disability, I am concerned about the possibility that removal of this provision may in fact work to the detriment of injured workers and promote contentious challenges regarding the applicability of the act to injuries suffered at home.

The legal argument upon which my concern is based may be put in the following way. For compensation to be payable, the accident or injury must arise from or occur in the course of employment. In the absence of a provision similar to subsection 3(4), it is arguable that serious and wilful misconduct constitutes activity beyond the scope of the employment relationship. The presence of the existing provision in the statute prevents or at least seriously weakens this argument by making it clear that serious and wilful misconduct can indeed give rise to compensation.

As I have indicated, its removal may well jeopardize the position of claimants. For that reason, I wanted to give members notice that this matter is still under serious review within the ministry and with other senior law officers of the crown. If it is determined that our concerns are well founded, then I will advise the House when the bill is reported to the committee of the whole and propose the appropriate amendment at that time to ensure that workers' rights are not inadvertently impaired or struck down by an amendment which obviously was passed with a contrary intention.

There were a number of suggested changes to the bill that relate to the exercise of discretion by the board. I refer in particular to the desire of some members to have a precise definition of the word "suitable," as it is used in relation to

sections dealing with supplements, to the allocation of compensation to surviving spouses where more than one exists and to the commutation of pensions.

In each of these cases, it is my view it would be both difficult and undesirable to limit the discretionary powers of the board. I can appreciate the natural apprehension that we all have as legislators about conferring unbridled discretion on administrative tribunals. However, I would make several comments about this difficult and complex topic.

First, the courts have been vigilant in ensuring that tribunals such as the Workers' Compensation Board, exercise their discretion judiciously and avoid decisions which are arbitrary and capricious. The lawyers among you will be aware of the line of administrative law cases which establishes this proposition.

Second, despite our best efforts to be as precise as possible, it is simply unrealistic to expect that in a statute of this sort, covering a multitude of unpredictable fact situations, every conceivable situation can be anticipated and defined by precise language. Let me cite an analogy from the field of industrial relations under the Labour Relations Act.

Among the many discretionary powers given to the Ontario Labour Relations Board is the power to determine whether the bargaining parties are, in a given-fact situation, making every reasonable effort to bargain in good faith and to conclude a collective agreement. I have sometimes heard it said that this language confers upon the board a broad discretionary power, as indeed it does. Yet it is conceded by industrial relations jurists and scholars that this is a power that a specialist tribunal like the labour board should be permitted to exercise in order to take into account all relevant labour relations considerations.

I believe the same considerations apply in respect of the sensible and pragmatic administration of a comprehensive insurance scheme of the sort established by the Workers' Compensation Act. In all three areas referred to above I do not believe it is desirable either to further refine the concepts, whether in the statute itself or in the regulations, or to fetter the board's discretion by words of limitation and restriction. I would remind members of the committee that wherever either a claimant or, indeed, an employer believes the board's discretionary determinations are erroneous, inequitable or otherwise unfair there are appeal procedures. In the proposed act such cases will be heard before an independent tribunal.

I would like to turn now to some of the concerns raised about the basis for determining compensation for injured workers in the amended act. In particular, members have raised concerns about the use of 90 per cent of net earnings as a basis for establishing compensation, about the appropriate compensation in cases where workers held more than one job and about adjusting pre-accident earnings for inflation in cases other than those involving supplements to permanently disabled workers.

Let me begin by reminding members of the conscious limitations placed on the scope and objectives of this bill. As I

indicated on the day I introduced Bill 101, it is the government's intention to deal comprehensively with the question of entitlement to compensation benefits for all injured workers in phase 2 of the reform process. In phase 1, however, we quite deliberately chose to address the most pressing issues related to compensation as well as the more general questions relating to the structures and processes of the board itself.

Accordingly, Bill 101 provides for a significant increase in the covered earnings ceiling. It provides for an entirely new system of benefits for survivors of fatally injured workers. It makes important adjustments in the way the supplement provisions for permanent disabilities can be administered. It corrects a historical inequity that results from the use of gross earnings as the basis for establishing the level of compensation benefits. And it integrates WCB benefits with those paid under the Canada pension plan with respect to the same injury.

In all other respects Bill 101, where it does address provisions related to compensation, basically re-enacts the provisions in the current act. This does not mean that in every instance we have concluded that these provisions do not merit review. Rather, as I have said, it simply indicates that the stage at which our comprehensive review will be undertaken is in the next phase.

While I do not wish to reiterate all the reasons for a phased approach to reform, I would remind members that the decision to delay total implementation of the white paper proposals was occasioned in significant measure by the apprehensions expressed by the representatives of the injured workers' groups, who had serious reservations about the fairness and equity of the wage-loss proposal set out in the white paper. As they pointed out, it would have deprived workers in the province of the certainty that was afforded by the current permanent pension system.

As I indicated in introducing Bill 101, it was for this reason in large measure that we determined that further analysis was required. That analysis will include several sections of the act about which some members have expressed concerns during the last few days and which, as I have indicated, have simply been re-enacted pending the completion of the phase 2 review.

12 noon

To address the particular concerns that members have raised about the use of 90 per cent of net earnings as the basis for compensation, let me simply say that our sole purpose in making this change was to introduce more equity into the system by taking into account the differential effects of the progressive income tax system on workers with various family sizes and income levels.

Ninety per cent of net earnings is in most instances comparable to the 75 per cent of gross earnings used in the current system. It will, however, be more equitable in its application in that it will provide relatively more generous benefits to workers with lower incomes and larger families, precisely those most in need.

Undoubtedly, the use of a common standard, such as 90 per cent of net or, indeed, 75 per cent of gross, as is currently the case, has the effect of overcompensating some workers and undercompensating others in terms of their actual loss. This is a matter which we will certainly need to address in phase 2.

I should note, however, that wherever other provinces have moved to the use of net earnings, they have adopted a 90 per cent of net earnings rule across the board. At this stage, therefore, I do not propose to attempt any further refinement regarding the application of the 90 per cent of net earnings principle. Between now and phase 2, we will have an opportunity to monitor its application and effects, and to determine whether inequities emerge.

Some members have also raised concerns regarding the new provisions for survivors' benefits. In particular, there is a desire by some members to make the new provisions retroactive in their effect. I am, of course, pleased that the honourable members find the new proposed system so attractive that they would wish to have it expanded to all claimants and not just those entitled following the coming into force of the act. Moreover, I am, of course, sympathetic to the plight of surviving spouses and dependents of fatally injured workers. That is why we have introduced these amendments to change the basis of compensating survivors in the future.

There would, however, be serious difficulties in making the effect of Bill 101 retroactive. First, in terms of the continuing pension component of the proposed dual award system, it would be administratively difficult, or perhaps impossible, to establish retrospectively the basis for compensation in many cases, namely, the pre-accident earnings rate.

Second, in terms of the lump sum component, the cost of a retroactive provision would, as you know, be very high. Board officials have provided the committee with estimates of the expected costs of retroactivity and have concluded that the lump sum provision alone, if made retroactive, would have an immediate cost impact of over \$160 million.

Honourable members will be aware of the widespread concerns that have been expressed about the unfunded liability and about the potential economic impact of the assessment increases that have been suggested to deal with this problem. It is vitally important that we avoid actions which would overburden the system and which would further jeopardize the solvency of the fund. I know that there will be some who will contend, unfairly I believe, that this stance is overprotective towards industry. However, the impact of an immediate increase in cost to employers in this province in excess of \$160 million should not be underestimated, particularly when many industries are experiencing only a very fragile recovery.

I need hardly remind members that it is our difficult task to attempt to balance questions of equity against affordability, and that if we err on the side of excessive expenditure, we will jeopardize the employment prospects of those whose interests we are all striving to protect.

Turning now to the question of Canada pension plan benefits and contributions raised by several members, I have made reference several times in the course of these committee hearings and during the Bill 101 debate in the Legislature to the government's rationale for the decision to take CPP disability and survivor pensions into account in the computation of rehabilitation supplements and survivor benefits under the new provisions of Bill 101. In doing so, I have noted that receipt of CPP benefits will not affect existing survivors' benefit claimants, nor will it affect the computation of permanent disability pensions. No one will see their existing workers' compensation benefits reduced as a result of the decision to have regard in future to CPP benefits.

The government's approach on this matter has been criticized by some members of the opposition. Most recently, during Friday's session, I understand this criticism was combined with the suggestion that if CPP benefits are to be taken into account in calculating workers' compensation entitlement, then CPP premiums payable should not be deducted from gross earnings where computing net earnings.

The objective in switching to use of net earnings to compute benefit entitlement is to produce a more consistent relationship between WCB benefits and pre-accident take-home pay. While I would argue that this produces a more equitable result than the present gross earnings method, there is no doubt that computation of net income is a more complicated procedure.

As I pointed out in my opening remarks to this committee last Thursday, it is simply not administratively feasible, nor necessarily desirable in my view, to seek to "personalize" the computations by taking into account all of the vast array of items, many of them not even connected with the employment relationship, which can impact on an individual worker's own tax position. Instead, we have opted to take into consideration what may be termed "automatic" or statutory income deductions and tax exemptions, while setting aside the nonstatutory or discretionary adjustments, those that in some sense arise through individual choice or circumstance.

The resultant calculation procedure for determination of net earnings is thus simplified, but not, in my view, in an unfair way. What remains after probable income tax, CPP and UIC premiums are deducted is in fact a very close approximation of take-home pay from employment, the figure that I would argue is justifiably the target to which post-accident compensation benefits should be linked in a systematic way.

In Bill 101, the government has taken the position that in determining the level of post-accident compensation benefits available, regard should be had not just to WCB benefits alone but also, at the very least, to other payments provided as a matter of public policy and contingent on the accident in question. Where CPP disability and survivor benefits are payable, entitlement arises as a result of the very same incident as gives rise to the WCB claim. I think it neither appropriate, nor indeed sensible, that two separately provided public compensation schemes should in effect each seek to ignore the existence of the other in the

process of setting a benefit level targeted at replacing, in part at least, previous earnings.

The purpose and effect of the relevant provisions of Bill 101 are to integrate these two systems to avoid duplication and to ensure that injured workers receive fair and appropriate levels of compensation.

Incidentally, in proposing this approach, we are simply bringing the Ontario system into substantial conformity with those of five other provinces, including British Columbia, Saskatchewan and Quebec.

Several members of the committee have also raised concerns about the extent to which the amended Workers' Compensation Act would provide for inflation adjustment of pre-accident earnings in computing benefit entitlement. During the recent past this problem has been most commonly identified with respect to entitlement for supplements under subsection 43(5) of the existing act. For that reason we have in fact introduced a provision in this bill which will empower the board to have regard to the effects of inflation on pre-accident earnings in those cases.

More generally, however, the practice of the government has been to take the effects of inflation into account for both temporary and permanent disability awards by enacting ad hoc increases from year to year. Some members have suggested that formal indexation of the Workers' Compensation Act be incorporated into Bill 101. My view is that the mechanism for making future adjustments is a matter that can be addressed effectively only in the context of the more comprehensive review of benefit entitlement that we propose to undertake in phase 2.

Turning to procedural issues, some members expressed concern about the extent to which the appeals tribunal's independence would be compromised by having the chairman sit as an ex officio member of the corporate board. While I do not share that concern, I concede that the issue is a difficult one and that arguments can be made for separation. I think it is important that, for purposes of continuity, a close linkage is maintained between the formation of policy by the board and the evolving jurisprudence developed by the tribunal. The risk of separation is that there will be parallel structures at the primary adjudication level on the one hand and the appeals level on the other, which may be applying inconsistent concepts and rules to entitlement issues.

I believe that the presence of the chairman of the appeals tribunal on the corporate board will provide the necessary policy link without compromising the essential independence of the appeals structure. The presence of outside directors representing labour, management and the public at large will ensure, I believe, that this independence will be preserved.

I would also note that the amended act provides that the corporate board can adopt practices and procedures for its own work. These may involve establishing rules that exclude ex officio members from deliberations involving matters which may give rise to conflict of interest or the appearance of conflict of interest.

The question has also been raised about a potential impasse between the appeals tribunal and the corporate board in the determination of a particular matter remitted to the appeals tribunal by the board following an interpretation of policy or general law. The bill is clear, Mr. Chairman, that the role of the corporate board is restricted to an interpretation of law and policy and not the particular merits of a case based on its facts.

In this latter area, the appeals tribunal has exclusive jurisdiction. It is perhaps conceivable, although I would think highly unlikely, that the board might direct the tribunal to reconsider a matter in the light of its determination on an interpretation of law and policy and encounter resistance from the tribunal. Such an improbable eventuality, however, could be subject to judicial review. I am therefore satisfied that the proposed language is appropriate and that there is no need for change.

A question was also raised about the functions of the industrial disease standards panel and the mechanisms for referring matters for its consideration. I know that, at the time, I indicated my own interest in referring issues to the panel once it is formed. However, I do not believe the panel should be required to address itself to all matters referred to it by the minister, by the board or by any other person.

Rather, as an independent body, it should set its own agenda taking into account representations that may be made to it from any source and the resources it has at its disposal to address such issues. To clarify that the panel has this prerogative, I propose to amend the subsection dealing with the determination of the practice and procedure of the panel to include reference to the fact that the panel should also determine its own priorities.

Finally, it has been pointed out that the bill, and indeed the present act, provides no opportunity for compensation for parents of a deceased worker who were in no way dependent upon that worker. The comments made in this regard are accurate. I would point out that the fundamental scheme of the act is to compensate for a loss of earning capacity and those dependent upon that capacity.

There is no doubt nondependent parents suffer grievous loss when a child is fatally injured on the job. However, for 70 years in this jurisdiction and for various periods of time in all other Canadian jurisdictions, as well as in the United States, compensation systems have been built on the premise that benefits are payable to indemnify against loss of earning capacity. In other words, neither our system, nor any other workers' compensation system of which I am aware, has purported to provide awards in respect of noneconomic loss.

It may be that at some future time our existing insurance scheme will require radical re-examination to determine whether it should be converted into a generalized social insurance program. Bill 101, however, does not attempt to do this, nor in all candour is this one of our aims, as we move to phase 2 of the process.

Mr. Chairman, in my response I believe I have dealt with the major concerns raised by my colleagues during the course of these hearings. Again, I thank them, and most sincerely, for the contributions they have made to this important debate.

Mr. Chairman: Thank you very much. I think, as I recall them, it certainly addresses most, if not all, the concerns that were raised in the various items we had stood down.

It might be appropriate now, as I see we are going to distribute copies of the statement and of the amendments, to adjourn now until two o'clock and give members an opportunity to review the various comments the minister made and to think out any potential amendments they may wish to make.

That being the case, we will adjourn until two o'clock. We have a good afternoon's work ahead of us to finish this up.

The committee recessed at 12:16 p.m.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

THURSDAY, SEPTEMBER 13, 1984

Afternoon sitting

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)
Gillies, P. A. (Brantford PC)
Havrot, E. M. (Timiskaming PC)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Kennedy, R. D. (Mississauga South PC)
Laughren, F. (Nickel Belt NDP)
Lupusella, A. (Dovercourt NDP)
Mancini, R. (Essex South L)
Riddell, J. K. (Huron-Middlesex L)
Sweeney, J. (Kitchener-Wilmot L)
Yakabuski, P. J. (Renfrew South PC)

Substitution:

Kolyn, A. (Lakeshore PC) for Mr. Villeneuve

Also taking part:

Gillies, P. A. (Brantford PC), Parliamentary Assistant to the
Minister of Labour

Clerk pro tem: Carrozza, F.

Staff: Revell, D., Legislative Counsel

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation
Board

Hess, P. A., Director, Legal Services Branch

MacDonald, A. G., Vice-Chairman of Administration and General
Manager, Workers' Compensation Board

Wolfson, Dr. A. D., Assistant Deputy Minister, Program Analysis
and Implementation

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, September 13, 1984

The committee met at 2:15 p.m. in committee room 2.

WORKERS' COMPENSATION AMENDMENT ACT
(concluded)

Resuming consideration of Bill 101, An Act to amend the Workers' Compensation Act.

Mr. Chairman: I will call the committee to order. The purpose of this afternoon's activities is to deal with the items that were stood down. We have not passed section 1, which is the definition section.

On section 1:

Mr. Sweeney: Mr. Chairman, if I recall, one of the things we decided to take a look at under the definition section is whether a definition for "suitable" should be put in. We were looking at the one used by the Saskatchewan Workers' Compensation Commission.

In his statement this morning, the minister rules that out, giving the argument that he wants the board to have as much flexibility as possible. The minister will recall that when witnesses appeared before us their concern was that there was a difference between flexibility and lack of consistency in the decisions being made. I suspect they are probably referring more to the lower levels of decision-making than to the final board level; nevertheless, I am a little concerned and a little uncertain about why the minister would not want a clear definition of what "suitable" includes, as a direction to the board.

Even the Saskatchewan one is pretty broad. I am sure the minister has had a chance to look at it. It includes some of the same things read to us this morning from the policy package with respect to the impairment of earning capacity. In that sense we are probably not setting any great precedent, but rather giving the injured workers and their representatives some assurance about what they are dealing with when they come to the word "suitable" in the legislation. The word appears on three or four different occasions in significant sections.

The minister made a point of referring to other jurisdictions in support of his arguments with respect to such things as the 90 per cent; therefore, it certainly does not appear the minister is not prepared to look at what other jurisdictions are doing. Surprisingly, I would also remind the minister that it was representation from both workers' groups and employer groups that supported the inclusion of a definition for "suitable," and in both cases reference was made to the Saskatchewan one.

Hon. Mr. Ramsay: I appreciate the opinions of the honourable member. I am afraid I cannot add too much to them.

I just want to go back for one moment, if I may. To my embarrassment, it was pointed out that on four occasions I may have twisted the words around a bit here. For example, at one point I said "include" rather than "exclude," and in each case, rather than try to correct it for the record, simply let me say that the printed copy is accurate. If I said "exclude" and it says "include," it is whatever is written on the printed page.

Mr. Chairman: Thank you for the clarification.

In response to your concerns, Mr. Sweeney, it appears the minister's statement stands.

Hon. Mr. Ramsay: It covers my position.

Mr. Sweeney: Then I gather there would be no point in making an amendment with respect to that?

Hon. Mr. Ramsay: No.

Mr. Sweeney: Onward and downward.

Mr. Chairman: There was another point we discussed under definition subsection 1(5). I recall there was concern about the term "industrial disease" as opposed to "occupational disease" in that subsection. As I recall, the statement did not specifically address that, or did you address it?

Hon. Mr. Ramsay: No, I did not address it.

Mr. Chairman, I thought we had agreed that "industrial disease" would stand. That is why we did not go into it any further. I think the whole section was stood down.

Mr. Chairman: The whole section was, yes.

Hon. Mr. Ramsay: Yes, but as far as that is concerned, I think I had not made a commitment to come back on that one.

Mr. Chairman: I have had a couple of people suggest to me that was dealt with by an amendment that was defeated.

I have one item marked on my copy here that we were going to return to, and that is sub-subclause (xa)(ii)(B) of the act, in subsection 1(7) of the bill, "In a relationship of some permanence, where there is a child born of whom they are the natural parents." I have a note marked down here to return to it. Does anybody know why we were going to return to it?

Hon. Mr. Ramsay: I thought legislative counsel had dealt with that at the time.

Mr. Sweeney: Someone suggested that the word "permanence" was misread as "performance," if I remember correctly. I do not think it was an amendment that was suggested.

Mr. Revell: All I have is a note here from the first day of the meetings when Mr. Laughren raised the issue about "in a relationship of some permanence." I have a note beside it saying, "Done." I have no idea what that means.

Hon. Mr. Ramsay: I thought you had explained it at that time.

Mr. Hess: I brought in a case.

Mr. Revell: Thank you, Mr. Hess. There is a copy of a case dealing with the interpretation of "some permanence."

Mr. Chairman: Are there any further questions on section 1? Shall section 1 carry?

Section 1 agreed to.

Mr. Laughren: Mr. Chairman, I do not know when to ask this question. Could you tell me whether I should pursue it now or at some other point? It has to do with a comment on the minister's statement on page 25. It does not matter to me when I raise it. I seek your guidance.

Mr. Chairman: Does it refer to a specific section or a generality?

Mr. Laughren: It has to do with the Canada pension plan.

Mr. Chairman: Why not wait until it arises at some point in our discussion. When it arises, then jump in with it.

On section 5:

Mr. Chairman: The next stood-down item is subsection 8(11) of the act, in subsection 5(3) of the bill. We stood that down because we wanted clarification of whether the word "director" should be inserted there. I think the minister addressed that. Shall subsection 8(11) carry? Carried.

Subsection 8(12) on page 6 was the next one that was stood down. The clerk suggests that was stood down because we stood down the previous subsection 8(11). Does that carry? Carried.

Section 5 agreed to.

On section 6:

Mr. Chairman: Section 6 of the bill was stood down for the same reason. Carried?

Section 6 agreed to.

Mr. Chairman: The next one I have is on page 9.

Mr. Laughren: No. it is on page 7. I think it is section 36 of the act, section 9 of the bill, that was stood down.

Clerk of the Committee: No, it was carried.

Mr. Laughren: No, it was stood down because of the retroactivity question.

Clerk of the Committee: As I recall, that was a mistake. Mr. Sweeney thought section 132 was the appropriate place for it.

Mr. Laughren: Okay. I am sorry.

On section 9:

Mr. Chairman: At the top of page 9, amending subsection 36(7) where it deals with burial expenses, I believe there was an amendment. Do we have a mover for that amendment?

Mr. Havrot: I so move.

Mr. Chairman: Mr. Havrot moves that subsection 36(7) of the act, as set out in section 9 of the bill, be amended by striking out, "in an amount as fixed from time to time," in the second and third lines and inserting in lieu thereof, "as determined."

Mr. Riddell: Have all the members received a copy of these amendments?

Mr. Chairman: Yes, they should have.

Mr. Riddell: When were they distributed?

Mr. Chairman: Just before lunch.

Hon. Mr. Ramsay: There was a copy of the statement and the amendments.

Mr. Riddell: I have the statement, but are the amendments attached to it?

Hon. Mr. Ramsay: No, they were distributed at the same time.

Mr. Riddell: They were not distributed to me. Maybe they missed me; I did not get them.

Mr. Chairman: Shall that amendment carry?

Mr. Mancini: Just a minute, Mr. Chairman. We are talking about the burial expenses here, are we not?

Mr. Chairman: That is right, yes.

Mr. Mancini: I made the point in the Legislature some time ago when we were talking about this bill that I was very concerned and somewhat embarrassed that this government would set a figure for burial expenses that would not cover the full costs of--for the lack of a better term--the "average" burial.

Mr. J. M. Johnson: The minister addressed that.

Mr. Mancini: Oh, did he? I am sorry, I was not here.

Mr. Chairman: It is unfortunate you missed it. The minister made a statement before lunch that covered all the items that were stood down.

Hon. Mr. Ramsay: Mr. Mancini, the amendment is to address your concern.

Mr. Sweeney: The minimum becomes \$1,500.

Mr. Mancini: Does that cover the costs?

Mr. Gillies: The board will have the flexibility now to award whatever appears appropriate. The ministry did a regional survey and found there is a great fluctuation in the cost of funerals depending where you are.

Hon. Mr. Ramsay: Starting at the bottom of page 3, Mr. Mancini, the last paragraph will outline it for you.

Mr. Mancini: The bottom of page 3 reads: "Second, concern was raised about the section dealing with burial expenses. I would note that the proposed language in Bill 101 represents a marked departure from the provisions in the current act which, instead of providing a floor for burial allowances, establish a ceiling. In fact, the ceiling for allowances in the current act is \$1,500. By way of contrast, Bill 101 provides for a minimum amount of \$1,500."

In order that the family of the deceased not be put through any embarrassing appeals--

Hon. Mr. Ramsay: If you would not mind, with respect, can you read the whole thing?

2:30 p.m.

Mr. Mancini: Yes, I am sorry. "By way of contrast, Bill 101 provides for a minimum amount of \$1,500 to be paid for burial expenses. The intent of this section is to ensure that the board can pay for expenses over and above \$1,500, where they are necessary and reasonable. I am informed by the board officials that such is indeed their intended policy."

Is it going to be the normal procedure of the board to work with the funeral director?

Hon. Mr. Ramsay: Go on and read the rest, Mr. Mancini.

Mr. Mancini: In order to save the committee's time--I am sorry I was not here this morning.

Hon. Mr. Ramsay: Let me read a couple of points out of the final paragraph.

"It may be, however, that the precise language of the relevant section could be interpreted as being unduly restrictive of the board's ability to pay reasonable expenses as they may vary from community to community. A random survey undertaken by my officials has established that the \$1,500 minimum figure is indeed appropriate in some parts of this province, though perhaps not in others.

"Bill 101 is designed, as I said, to allow the board to exercise its discretion in compensating reasonable expenses, and it is not our intent that those amounts be standardized across all potential claimants. Accordingly, I am prepared to move an amendment to section 9 of the bill that would provide for the necessary discretion."

Mr. Mancini: That is very good. I am glad this is here. Are the board officials going to deal directly with the funeral director in order that the figure be established? Or are we going to be involved in cases of appeals? I feel it would save a lot of heartache if that could be the intended policy.

Hon. Mr. Ramsay: I cannot tell you how they plan to deal with it. They have been dealing with it up until now. Maybe we can ask Mr. Cain how they have been dealing with burial expenses to this point. The question, Mr. Cain, is how the board at present addresses funeral expenses if they are in excess of \$1,500. Does the claimant appeal to the board, go to the board and submit the expenses, or does the board deal directly with the funeral director?

Mr. Cain: I am not certain. I assume in some cases we probably get the bills in directly from the funeral director and pay them directly. Obviously, that is the most appropriate way to do it when the bills arrive. It may well be that the dependent spouse, or whoever, having already paid, sends the bills to us and we reimburse her.

Mr. Mancini: That is fine, sir, but what is your policy right now? What is the normal course of procedure now?

Mr. Cain: I would say the normal procedure is whoever sends the bills will receive the money. If it is the funeral home that sends us the bills, then we will pay it direct. If it is the spouse, then we will pay her.

Mr. Mancini: I am very worried about getting into a potential situation where the wife of the deceased worker sends you a bill for \$2,200 and you send her back a cheque for \$1,800. I think that creates a whole group of problems that can and should be avoided. Gosh, I would hate to get into appeals for funeral allowances.

Mr. Sweeney: There would have to be some limitation, though.

Mr. Mancini: Yes, I agree with you.

Mr. Sweeney: If somebody wants to have a \$5,000 funeral--

Mr. Mancini: I agree with you 100 per cent, but at the same time I would like you to consider the possibility of making direct contact with the funeral director, speaking directly with the person who is going to work out the bill as to what the intended charges are and then making a decision.

Mr. Cain: It is very difficult for us to find out who the funeral director is. I do not think it is impossible because, obviously, when we hear about a fatal accident, and frequently we learn of it in the newspaper or on a radio broadcast, as a result of that we always automatically set up a claim and then go to the employer and make sure we get the information.

We try to set up and start the proceedings in the claim without contacting the dependants directly and immediately. We try to give that a day or two.

The problem I could see is if we contact the funeral director--if we know the name, and that would be the first problem--I suppose to take the worst scenario, the funeral director says, "This funeral is going to cost \$3,000," and the board says: "I am sorry. In this area of the province we pay \$2,000." Then the funeral director is in the position of having to go to someone in the family during the period of mourning, and I hardly think that is appropriate. In fact, it obviously would be absolutely disastrous. I do not see what contacting the funeral director would do.

Mr. Mancini: I think you understand what I am driving at.

Mr. Cain: Absolutely. I see your point. I do. It is just how one works around it. I know that our dependency section has two priorities. One is to act very rapidly, and the other is to act with absolute and total sensitivity. They are supposed to be as obtuse as possible, if that is what is called for, but sensitivity is of the utmost importance.

Mr. J. M. Johnson: On the same point, I had an experience with a welfare recipient who faced a lot of embarrassment because of the unknown price of a funeral. Would it not be possible for the board to sit down with the funeral directors' association to come up with an average price for whatever type of funeral you wanted to fit into this category in each of the areas and have the funeral directors agree to that so that there was no misunderstanding?

If it is in a small town, \$1,500 is a good, reasonable price for a funeral. Perhaps in the city of Toronto one could add \$1,000; I do not know. However, surely there is a figure--\$1,500, \$2,000 or \$2,500, and everyone knows there is such a figure--that would be acceptable by all parties. We would not have the problems that Remo raises, because afterwards is not the time to try to resolve it.

Mr. Riddell: That could change from year to year. His expenses could continue later on.

Mr. Kennedy: --(inaudible) by regulation, but what the families say about the prices is very important.

Mr. Sweeney: I think, though, if I can recall the discussion, gentlemen, the original concern was that the ceilings set under the old legislation were simply not realistic in many parts of the province.

We have had previous ceilings of \$1,300, \$1,400, and now \$1,500--ceilings, not floors. The argument we made was that there has to be some provision for recognizing that in certain parts of this province you simply cannot get funeral arrangements for that kind of money. On average, the minimum is \$2,300, \$2,400, \$2,600, or whatever the case may be, and there has to be a provision made for that. That is what we were trying to get at.

Quite frankly, I think we have done that by changing a ceiling to a floor, and giving the board some discretion to pay more where it is reasonable in those areas to pay more.

Mr. J. M. Johnson: All that is necessary is for the board to work with the funeral directors' association, and establish a figure that applies to the different parts of the province. I think we will resolve the concerns of Mr. Mancini.

Mr. Sweeney: It is reasonable that if a typical, modest, average funeral in the city of Windsor is going to run around \$2,300 or \$2,400, the board is not going to face an appeal by saying that all it is going to pay is \$1,900. I hope you just do not pick figures out of the air like that.

Mr. Kolyn: I seem to agree with Mr. Sweeney. I think we have resolved the basic problem of making \$1,500 the minimum limit, and for us to try to put a maximum limit on it is going to bring all kinds of problems.

For example, in Metropolitan Toronto, people from ethnic backgrounds spend a lot more than \$3,000 or \$4,000 for a funeral because of the ethnicity and what they consider important. In fairness, the board should rule on the merits of each individual case. I would certainly be against putting any ceilings on what the funeral expenses should be and, least of all, making the people who do the burying give us the price.

Mr. Mancini: We are not talking about a maximum. We are talking about how to implement policy. I just want to clear that up.

2:40 p.m.

Mr. Havrot: Following up on what Mr. Kolyn has said, Mr. Johnson mentioned that if we could get the average cost of funerals throughout the province, we could notify the undertaker as to what the board will pay in that particular area, so that the survivors of the deceased can come in and say, "We want a \$5,000 funeral," and the undertaker will say, "Here is what you are allowed in this area." It would therefore establish some credibility so that there would not be any argument in a case, say, as Mr. Kolyn has pointed out, of a funeral costing maybe \$3,000 or \$4,000.

Some of the families may want to spend more money on the funeral. At least that gives them the basis of what they spend that will be paid for by the board. Anything over and above that they would have to pay for themselves.

Mr. Mancini: Why do we not leave it that the members of the committee have expressed great concern over this matter and that we will leave it for the officials of the board to consider?

Hon. Mr. Ramsay: Mr. MacDonald, the vice-president of administration, is in attendance today and I am sure he has noted your concerns.

Mr. Chairman: Shall subsection 36(7) of the act, as amended in section 9 of the bill, carry as amended? Carried.

Let us now turn to page 10 at the very top which deals with subsection 36(13). There was concern about Canada pension plan benefits.

Mr. Laughren: Did you want me to raise at this point the minister's other statement? Is that what you are telling me?

Mr. Chairman: We are dealing with CPP.

Hon. Mr. Ramsay: Floyd, before you start, could I ask Mr. MacDonald to come up to the table? Then if there is any clarification required, he can provide it.

Mr. Laughren: It is really that I do not understand it. At this point it is not even a question of taking issue with it. I just do not understand it.

On page 25 you state: "Where CPP disability and survivor benefits are payable, entitlement arises as a result of the very same incident as gives rise to the WCB claim." That I do not understand.

Are you implying the Canada pension disability benefit came about because of the same injury for which the worker is receiving workers' compensation benefits? If that is true, what about the very large number of cases where that is only partly the cause of the CPP payment? It could have little or nothing to do with the compensable disability.

Dr. Wolfson: Mr. MacDonald may want to comment on the way the board would apply this, but I believe the intent of the subsection would be to have regard for CPP payments in computing net earnings only with respect to the CPP payments that flowed from the same injury that was the subject of an application for compensation before the board.

If it were an entirely different event that had given rise to the CPP disability payment, the board would not have regard to those payments in computing net earnings for the purposes of the claim under review.

Mr. Laughren: Let me give you an example to explain why I am confused. I have written to the board about a man who has a

number of disabilities. In total, I think they come to 35 or 40 per cent; he has an eye that is shot, a shoulder, all sorts of things are wrong with him. He is on Canada pension total disability.

The board is paying him 35 per cent because it assesses his compensable injuries to be clinically at that total, 35 to 40 per cent. CPP says that because of those injuries he is kaput, totally disabled. I am wondering where this person fits into the scheme?

Dr. Wolfson: I think the board would be in a better position to respond to that.

Mr. MacDonald: Gentlemen, I think Dr. Wolfson has given you the basic intent of the section, and the board is certainly going to be faced with the problem of sorting out the source of the disability and then deciding how to use an offset provision.

To predict how it would work in every case is pretty hard for me to do at this point, but I can say that the section clearly states to me that you can only offset for the disability or for the effects of the disability that flow from the accident. It is going to create a new administrative decision for the board.

Mr. Laughren: It may create a new administrative nightmare for the board.

Mr. MacDonald: We get lots of things from the legislation that perhaps are unexpected.

Mr. Laughren: Can we pursue this a minute? I am not asking you to rule on the example I gave. Generally speaking, there is an enormous number--I do not know how many--of injured workers receiving partial disability payments from the board and total disability payments from CPP.

Mr. MacDonald: That is right.

Mr. Laughren: How are you going to sort that out?

Mr. MacDonald: I do not know how you can do it on hypothetical cases. You would have to have the exact fact situation before you to make a decision.

Mr. Lupusella: The principle should be the same.

Mr. Laughren: How will you be able to say that this person's Canada pension is because of?

Mr. MacDonald: There may be some you just do not know at all, but I suspect there are some very clear cases you will find easy to deal with. You have to understand that in my capacity, where I sit, I can only talk to you about how I believe the board would interpret policy and a new section and what the words say. I do not deal with claims on a day-to-day basis.

Mr. Laughren: No, but you are setting the policy.

Mr. MacDonald: Mr. Cain can probably give you a better answer than I can about that situation. We have been thinking about this since we have seen the new legislation, and we know we are going to have some administration problems. You call it a nightmare, but we just consider them problems we have to solve.

Mr. Laughren: Okay. But I can imagine what is going to happen when you get two workers, one from whom you have decided to deduct Canada pension in computing his earnings, and the other from whom you have decided not to. I do not know what is going to go through those people's heads.

Mr. Sweeney: I want to clarify a point. If I understand what Dr. Wolfson just said, if Canada pension disability were granted for a reason other than an industrial accident, it would not be deducted.

For example, if Canada pension were granted as a result of a car accident that had nothing to do with the work place, and the worker simultaneously, or just before or just after, whatever the case may be, was on workers' compensation, then you have two distinct events and the non-industrial accident is what draws the Canada pension.

I understand that. That makes sense. What I do not fully understand, if I am following something Floyd said a few minutes ago, is that if the workers' compensation benefit draws from an accident resulting in, say, 30 per cent compensation and the CPP draws from the same accident but resulting in 100 per cent compensation, there is a 70 per cent difference. There are two different applications. Would the 70 per cent difference not apply?

Dr. Wolfson: That is a question of board policy. The only comment I might make is that it may be possible that different agencies will review the same condition arising from the same injury and come to different conclusions as to the extent of disability. The comments I made earlier were simply to the effect that where there is to be regard for CPP payments it has to be with respect to the same injury.

Mr. Sweeney: Regardless of the percentage application?

Dr. Wolfson: Correct.

2:50 p.m.

Mr. Laughren: So if a doctor said this person would be totally disabled and eligible for Canada pension, regardless of whether there had been a WCB injury, the Canada pension would not be taken into consideration?

Dr. Wolfson: I am sorry. Would you please repeat that question?

Mr. Laughren: If a doctor said this worker would be totally disabled, regardless of whether there was a compensable injury, even though there was, that worker would be eligible for Canada pension, and that Canada pension would not be taken into consideration, in your belief.

Dr. Wolfson: If as in Mr. Sweeney's example the total disability arose from a car accident or something like that, it would not be taken into account. That is correct.

Mr. Lupusella: Prior to the time of the industrial accident?

Dr. Wolfson: Right. Or after.

Mr. Lupusella: Or after. However, if the Canada pension plan derives from the industrial accident, in relation to the application to the CPP from the injured worker there would be a deduction.

Mr. Laughren: Even though the compensable accident only partially contributed to his total disability, the board would consider the Canada pension.

Mr. MacDonald: Doug, do you want to deal with the question?

Mr. Cain: Administratively, of course, it has to be developed, but it seems to me that in trying to identify whether a CPP disability pension is in whole or in part contributing, based on the compensable disability, one thing we know initially is that there are occasions when CPP ask us for one thing. They will ask us if they may have medical reports, and we have allowed our medical department to provide them with that. One could make the assumption right off the top that the compensable disability may have some bearing on the CPP award they are going to provide.

We also know that a CPP disability pension is provided, not necessarily on the basis that the person has a permanent disability which is going to be endless, until the end of his life, but, on the contrary, that he will be disabled from employment for the foreseeable future, that is, employment that is very worthwhile.

It seems to me that what we could do initially--and we will probably have to get into discussion with CPP along the line and see if they will provide us with any information--would be to ask the injured worker for some type of information showing us the reason why he is receiving CPP benefits.

At least, that would be an initial way to say, "Well, we will deduct CPP in this, we will deduct part of it, or we will not deduct any of it," and maybe, by some means or another, we could get into a dialogue with CPP to get more specific information as to the disabilities for which they are paying their pension.

Mr. Lupusella: With the greatest respect, the minister should now understand the main reason why we are extremely concerned about the reduction of CPP and the ramifications deriving from that.

First of all, I have a question for the policy-maker of the board, Mr. MacDonald, on the clear-cut case of an injured worker who is receiving a 40 per cent permanent disability award from the

board related to the industrial accident. Without any other specific factor, the injured worker applies for CPP. He is declared totally and permanently disabled by CPP, and therefore, in the final analysis, is entitled to CPP.

It is a case of a straight, related disability as a result of the industrial accident. We are faced with a 40 per cent permanent disability award coming from the board. As a result of such disability, the Canada pension plan declares the individual, just on that basis, as being permanently and totally disabled.

This individual now applies for supplement pension. Based on Bill 101, the board uses the criterion of impairment of earning capacity, which is greater than is usual for the nature and degree of the worker's injury. How can you trap this injured worker in both ways? First of all, you deduct the total amount of Canada pension and at the same time you deny supplement pension because he is not really available to do a light job. I really do not understand. What kind of interpretation of the new policy within the framework of the present policy are you going to use to detect impairment of earning capacity of the injured worker?

Mr. MacDonald: You are mixing up a couple of sections in your question.

Mr. Chairman: I think you are mixing up a couple of sections, but let us deal with the whole CPP situation now and from here on in--

Mr. MacDonald: I am prepared to answer. Essentially you are talking about the claim of a man who is 40 per cent disabled according to our criteria and 100 per cent disabled from the same incident and nothing else by the CPP. What this tells us is that we have to take into account two new things.

As far as passing the threshold question, we are entitled to look at the fact situation of whether he is back in the work force or not in relation to the indexed earnings, rather than the actual earnings at the time of accident, so he can pass the threshold question easier. Once he has passed the threshold question, then he is entitled to the benefits described in the section. You have to take into account--

Mr. Lupusella: But he is declaring himself totally disabled. The board is already penalizing the present injured worker. How can you detect impairment of earning capacity now? Why do you not declare the worker to be totally disabled under your own scheme, because the CPP declared the individual 100 per cent disabled? You cannot penalize the injured worker at the whims of the policymakers of the board. You cannot do that. This injured worker is really trapped in all directions.

Mr. MacDonald: I guess I do not understand your final question. Perhaps Doug does, but I do not.

Mr. Cain: The only thing I can comment on is if the person declares himself totally disabled under this section of the act, you cannot pay him a supplement. He must be available for

employment and available for vocational rehabilitation training. The section states that, so if he is not, if he declares himself totally disabled and unable to co-operate, we have no alternative but not to pay him.

Mr. Lupusella: Let us say he is co-operating. He is looking for a light job. If he has not found a job yet, he is going to be penalized.

Mr. Cain: If we do not pay him the supplement.

Mr. Lupusella: Tell me if it is not a clear-cut case of a trap. Where is the injured worker going to move to?

Mr. Cain: I think it is safe to say we are not telling CPP whether to make its payment. Obviously we cannot use CPP to tell us whether we will or will not pay, otherwise--

Mr. Lupusella: You are the one interfering with CPP. CPP is not interfering with your system.

Mr. Cain: At the risk of whatever, I would remind you that the minister this morning in his statement commented on the idea of compensating the injured worker in an appropriate fashion approximating his pre-accident and take-home pay. That is what we are endeavouring to do, where possible. If CPP is a factor in that, then we have to take it into account.

Mr. Lupusella: I do not want to get into a debate. The debate was long enough. Anyway, I do not think we are able to change the minister's mind.

I have another question to the policymaker of the board, Mr. MacDonald. Under which section of the present act do you have the right to deny supplement pension to injured workers receiving CPP? Who gives you the legal authority to eliminate or refuse supplement pension because the individual is receiving CPP? I understand there is legal revision of this item, as the minister told us.

3 p.m.

Mr. MacDonald: That is subsection 43(5).

Mr. Lupusella: The minister will intervene with the board to clarify this situation. Anyway, that is what he told us.

Mr. MacDonald: Subsection 43(5) of the current act is--

Mr. Lupusella: It says the man is not co-operating and is not available to do light jobs.

Mr. MacDonald: The fact that you are merely going to receive a Canada pension plan, I might remind you, does not indicate any longer under the new legislation that you are not co-operating.

Mr. Lupusella: I am talking about the present act.

Mr. MacDonald: I know. The present act makes it quite clear that you have to be involved in rehabilitation or a medical training process and you have to be co-operating and seeking employment in order for us to pay a supplement. The new act does not say that.

Mr. Lupusella: Let us not talk about the new act.

Mr. Chairman: We are dealing with the new act.

Mr. Lupusella: Let us say I am co-operating, I am looking for a light job, I am doing what the rehabilitation department tells me and the only problem is that I am receiving CPP. Why should I not receive a supplementary pension? I have not found a job yet. You have the right to stop my supplementary pension if you are able to find me a job and I refuse it.

Mr. MacDonald: The board believes, and therefore its policy flows from this, that by accepting CPP under the present circumstances, in the way the act is currently worded you have taken yourself out of employment and you have said you are not available.

Perhaps the minister wants to comment. Some conversations have been taking place about that issue. Do you wish to do that, sir?

Mr. Chairman: We are dealing with the new act, really. We cannot deal with the old act, because it is being replaced.

Mr. Lupusella: We cannot (inaudible) the issues in the way the board wants, Mr. Chairman.

Mr. Sweeney: It does raise a question, though, that we should perhaps identify, and that is that under the existing act a worker could be denied application for a supplement solely because he is accepting CPP, for the reason you just gave.

Mr. MacDonald: Yes, he could.

Mr. Sweeney: That is an existing claim. When the new act comes into force, can an existing claimant reapply for supplement on the basis of the changed act? Will he be permitted to do that even though it is an existing claim? Is that valid? Or will he be denied because he made a claim before this act came in? Am I making sense?

Mr. Cain: Yes. In part III of the bill you have a rewritten subsection 43(5), which, except for the fact that it says 75 per cent, is precisely the same as the section in part II that will apply to new claims. Therefore, it would seem to me, since the wording is exactly the same, that you will have to administer existing claims in exactly the same way you will new claims for that section. There is no alternative.

Mr. Mancini: As I have done in the past and stated in the Legislature, I want to oppose strongly the government's position of integrating Canada pension plan benefits due to

workers with the workers' compensation plan benefits due to injured workers. The Canada pension plan is paid for by the work force of this province and operated by a different level of government and, in my view, you have no right to interfere with that plan. Second, you have no right to lower people's benefits because they are receiving awards from a different plan that they have paid into.

I want to know from the board how much money it believes it will save by adopting subsection 36(13).

Mr. Chairman: Can we get a figure on that?

Mr. MacDonald: There is an additional cost to it. The figures are up there. I do not have them with me.

Mr. Mancini: I want to know how much money you plan to save.

Mr. MacDonald: There is no saving. There are some additional costs arising from this section.

Mr. Mancini: Excuse me, sir, but that is impossible. If you are going to use a plan that is paid for by the workers and operated by a different level of government in order to integrate that plan into your benefits and reduce your payment, how can it be possible that you will have no savings?

Mr. MacDonald: The current situation is that if the Canada pension plan is being paid, there is no provision for the supplement, for the reasons we have just discussed. Here we are changing the rules so that supplements can be paid and CPP will be an offset.

This is off the top of my head, but, as I recall, I think it is \$12 million additional. Do you have the table? Is that right? So there is an additional annual cost of \$12 million to the fund by providing this additional benefit.

Mr. Gillies: The difference being the cost of providing a supplement to these workers for which they were not previously eligible, as opposed to the portion of the pension which would be offset. The difference is about \$12 million.

Mr. Mancini: That is very cute. You are assuming that all of these people will be entitled to the supplement, when in fact they have received notice from their doctors that they are unable to join the work force for the foreseeable future, and therefore your supplement will not apply.

Mr. Gillies: Why do we not hear what the presumptions of the board were in arriving at that figure?

Mr. MacDonald: We made an analysis of our case load and looked at it in the light of this situation. Our actuaries calculated those cases that would be entitled to an additional benefit, based on the facts as they saw them in the file. It was a very informed kind of analysis. It is not a guess.

Mr. Mancini: If the concern of the board is, the way I understand it, that it wants to ensure that people who are on Canada pension plan and disability benefits be entitled to receive the supplement, why do you not just go ahead and do that, and say, "Because you collect CPP, this will not disentitle you to the supplement," and then integrate the Canada pension plan benefits?

I could believe you if you said, "Yes, we are doing this because we want to give these people their supplements, and we do not want the fact that they are receiving these benefits to disallow them their supplements." That would take care of this situation, plain and simple, but we are going one step further. We are integrating the plan, and I have to conclude that there will be savings to the Workers' Compensation Board.

Mr. Chairman: First of all, this is not the board's bill. This is the Ministry of Labour's bill.

Mr. Mancini: Yes, but we have an expert here. To whom am I supposed to direct my questions? Sometimes I am asked to direct them here, and sometimes to Mr. MacDonald. Instruct me to whom I am supposed to direct my questions.

Mr. Chairman: The board is here to answer policy-related questions. It is the Ministry of Labour's bill we are dealing with.

Mr. Mancini: What do you want me to do?

Mr. Chairman: The fact that there is no saving on this bill, where it relates to supplementary payments, has been answered on a couple of occasions.

Mr. Mancini: Fine. Then I asked a policy question after I received that answer. I asked a question on policy. If it was the intent of the board to ensure that these people were able to receive their supplements, why was the legislation not written in that fashion? Why was it written in such a fashion as to say, "Yes, we will allow you your supplements, but at the same time we are going to integrate your CPP benefits and therefore lower what you would have been able to receive in the past"?

Hon. Mr. Ramsay: Mr. Mancini, on page 15 of the bill, subsection 45(9): "Notwithstanding subsection 40(3) or subsection 6 or 8 of this section, the fact that a worker is receiving payments under the Canada pension plan shall not be a bar to receiving payments under clause 40(2)(b) or subsection 5 or 7 of this section."

Mr. Mancini: I believe I understand that section and I accept what you are telling me. I accept the premise that you want to be able to give supplements and that you will do this for the benefit of the workers. I accept that wholeheartedly.

3:10 p.m.

My question is, why do you go that extra step and interfere with a plan that is not operated by your government, that is paid into by workers? Why do you integrate that plan in order to--

Hon. Mr. Ramsay: I say this with the greatest of respect, Mr. Mancini. If you just took about five minutes and went out into the hall where nobody would bother you, and read my statement from beginning to end, you would be able to take part in this debate today fully informed. In other words, I have already attempted to answer the questions you are asking me in my statement. It is unfortunate you have not had a chance to read it.

Mr. Mancini: With all respect to you, I would respond that I appreciate the statement you have made to clarify things. I certainly appreciate that. Clarifying things and having us agree with things are two separate matters.

Mr. Chairman: Mr. Mancini and all committee members, we stood down quite a number of sections. We had full debate on most of these sections. This is the time for further clarification, but we do not want to rehash the debate we have already had on these various sections. I am not suggesting for a moment that anybody has to agree with what the minister has presented in his statement.

Hon. Mr. Ramsay: Nor am I.

Mr. Chairman: I do feel we have had an opportunity for debate. Clarification is what we want to get right now. In the hour and 15 minutes we have remaining, I want to try to clean up all these stood-down items.

I am allowing a wide-ranging discussion on CPP because it comes up time and again. I would hope that by having a wide-ranging discussion we would deal with all the CPP items right now as far as discussion is concerned.

Mr. Mancini: With respect, Mr. Chairman, if you were listening attentively to what I was saying, I have kept all my questions specifically on CPP. I have not deviated at all.

To go back to the minister's comment, I would like to tell him he has heard comments in the House about the CPP integration. He has heard it from me and from other sources. Whether you made a nice statement this morning that gave your view and your opinion of it is one thing; whether we agree with it is something altogether separate.

Hon. Mr. Ramsay: I am not arguing that.

Mr. Mancini: I appreciate what you had to say, but let me just say I disagree with it entirely.

I will ask the question once again, for the final time. If it is your view that what you want to do is give people a supplement, why then is it absolutely necessary for you to integrate the CPP benefits in order to reduce benefits?

Hon. Mr. Ramsay: Mr. Mancini, short of reading my statement, which I really do not want to do, I do not have any explanation for you other than what I have already given.

Mr. Mancini: Then that is a political decision you have made. Fine, I accept that.

Hon. Mr. Ramsay: There comes a point where you have to review everybody's opinion, which I have done. I have seriously attempted to do so in a just and equitable way, but there comes a point where I have the final responsibility and have to make a decision. You may feel it is the wrong decision and I respect that. Nevertheless, I have to do it.

Mr. Laughren: I had not quite finished page 25 and I had another question.

The minister states in the middle of the page, "I think it neither appropriate, nor indeed sensible, that two separately provided public compensation schemes should in effect each seek to ignore the existence of the other in the process of setting a benefit level targeted at replacing, in part at least, previous earnings."

My question has to do with the phrase "public compensation schemes." Is the minister casting the WCB plan or compensation scheme in the same category as Canada pension? Is that what you are implying in that statement? It confuses me.

Hon. Mr. Ramsay: The compensation system serves the public. It is used in that context, Mr. Laughren.

Mr. Laughren: But you are not implying that it is publicly funded?

Hon. Mr. Ramsay: No.

Mr. Laughren: It is strange wording for you to use, but as long as we are clear that you do not see it that way.

My other question, because we are dealing with Canada pension generally, is on page 14 of the bill where you are arriving at the net average earnings figure of the injured worker. At the top of page 14 you say, "By deducting from the earnings of a worker income tax and the probable Canada pension plan premiums payable by the worker." Correct? That is what you are doing.

I then go back to Weiler, Reshaping Workers' Compensation for Ontario. On page 43 of Weiler's first report, he states:

"In calculating the amount of compensation to be paid to an injured worker, based on his pre-injury net disposable income, allowance should be made for the absence of Canada pension plan and unemployment insurance deductions from the worker's compensation payment, only"--and there is underlining in my tone of voice, I hope--"if and to the extent that the injured worker suffers no loss of entitlement to benefits under these two public programs."

It seems to me you have not built into this act that the board shall continue the payment of those premiums on behalf of the worker. Am I correct?

Dr. Wolfson: Would you repeat that question?

Mr. Laughren: The compensation board does not pay the CPP premiums for the worker when the worker is on compensation.

Dr. Wolfson: That is correct.

Mr. Laughren: Then why would you choose to ignore that very strong warning from Professor Weiler? I will repeat it for the minister because--

Hon. Mr. Ramsay: That is not necessary. If you read that document you have in front of you, you will find there are other examples of disagreement with Professor Weiler's recommendations. It is an excellent document. The work of this committee is being based on it. But that does not mean we accepted everything he suggested.

Mr. Laughren: But that goes back to the point we were trying to make before, which you promised to take a serious look at. I do not think you did.

You cannot have it both ways. You cannot consider premiums paid when computing the worker's net average earnings and then penalize the worker for the benefits he gets from those premiums. It is what I referred to earlier as double jeopardy.

I want to know where you see justification for ignoring that part of Weiler, other than to say, "I pick and choose and I will decide what I ignore and what I endorse."

It seems to me that Professor Weiler makes a good point. In his view, it is only fair to consider Canada pension and to deduct Canada pension premiums to arrive at net average earnings if those benefits are to be continued and if the premiums are paid by the compensation board.

How in the world do you justify that? Do we have to debate this thing all afternoon? I do not understand where you get the chutzpah to deduct that to arrive at net average earnings. That is beyond my comprehension. I do not agree with some of the things you are doing, but I understand them. On this one I do not even understand why you would do that. It is not necessary, to start with.

It is one of those areas where somebody made an arbitrary decision and not very thoughtfully. That is where I think you have yourself in trouble on this section. You may not see this trouble, but I think there is an enormous illogic there, and I hope someone challenges it because it is fundamentally wrong. You cannot do it that way. You cannot have it both ways.

That is the point Professor Weiler was trying to make to you. You have taken one part of Weiler's recommendation, namely, to consider Canada pension in arriving at benefits, and you have chosen to ignore one that he says is integral to his suggestion. I do not understand how you think you can get away with that. It is grossly unfair. Are you adamant in your--

Hon. Mr. Ramsay: Yes.

3:20 p.m.

Mr. Laughren: I want to tell you, Mr. Chairman, the minister does not make it easy for the opposition to seriously debate and to try to be constructive in clause-by-clause debate, even when something is pointed out that I think is not at all unreasonable. It is not simply a question of the level of benefits; it is a question of what is common sense, logical, fair, and in keeping with Weiler's recommendation.

If you had ignored the total package of Weiler on Canada pensions, I would say, fine, you are consistent. I do not agree with you, however. If you had said, "We will take all of Weiler, including considering the Canada pension benefit, and not deduct the premiums from the net average earnings," that would have been fine. You are buying the package; you are agreeing with its consistency, even though I do not agree with it.

However, here you have decided to split Weiler up--in a way, coincidentally, that does the most damage to workers, and that I do not understand. It is beyond my comprehension. Why can you not at least be consistent on something like this? It is a package deal on the Canada pension.

Hon. Mr. Ramsay: Mr. Laughren and I are going to have to agree to disagree. I just want to assure him that there was careful consideration of the point and of his arguments, and we have decided to take this particular route.

Mr. Laughren: I find it hard to believe. I believe there was careful consideration given to the broader Canada pension question. I find it impossible to believe that there was careful consideration given to this aspect of deducting the premiums to arrive at net average earnings.

I find it impossible to believe that was done thoughtfully. If it had been, you would have had a better explanation than, "I will pick, and I will decide what part of Weiler to accept." What kind of explanation is that for something as illogical as this? It does not make any sense at all.

Mr. Chairman, if you really want the debate to continue, fine. However, if that is the only kind of explanation we are going to get, what sense is there in us trying to expedite the passage of this clause-by-clause debate when we are not getting any co-operation from the minister? Why should we be part of this sham if that is the way he is going to behave? It is nonsense.

Mr. Kolyn: I have heard Mr. Laughren's point of view. The minister reiterated his point of view earlier this morning. I was just rereading, while Mr. Laughren was talking, the bottom of page 22 and all of page 23. I think the minister was pretty clear in the middle of page 23. He starts the objective of switching to use of net earnings, and he goes on. I think the way he sees it is pretty clear.

It is obvious that they agree to disagree, but I think the minister has made his views known, Mr. Laughren has made his views known, and they do not coincide.

Mr. Laughren: I have given reasons for mine.

Mr. Kolyn: If you read it, he has given you the reasons there too.

Mr. Laughren: Where?

Mr. Kolyn: Start on page 23.

Mr. Laughren: Of his statement?

Mr. Kolyn: Yes.

Mr. Laughren: On the deduction of premiums?

Mr. Kolyn: He is talking about CPP from page 22 to page 23.

Mr. Laughren: Where is the section on the premiums?

Mr. Mancini: Have you read page 23?

Mr. Laughren: Yes, I have read it. Where is the section on the premiums being deducted to get net average earnings?

Mr. Kolyn: "The objective in switching to use of net earnings to compute benefit entitlement is to produce a more consistent relationship between WCB benefits and pre-accident take-home pay. While I would argue that this produces a more equitable result than the present gross earning method, there is no doubt that computation of net income is a more complicated procedure.

"As I pointed out in my opening remarks to this committee last Thursday, it is simply not administratively feasible, nor necessarily desirable in my view, to seek to 'personalize' the computations by taking into account all of the vast array of items, many of them not even connected with the employment relationship, which can impact on the individual worker's own tax position.

"Instead, we have opted to take into consideration what may be termed 'automatic' or statutory income deductions and tax exemptions, while setting aside the nonstatutory discriminatory adjustments--those that in some sense arise through individual choice or circumstance."

So he was addressing that whole situation.

Mr. Laughren: I await the explanation on the benefit deductions. Where is it? It is not there anywhere. As a matter of fact, the minister gives it away, if you read the next paragraph, Mr. Kolyn. It says, "What remains after probable income tax, CPP and UIC premiums are deducted is in fact a very close approximation of take-home pay from employment." That is really what was motivating the minister in deducting the CPP premiums. He was trying to get as close an approximation as possible to net income. That is really what was motivating him.

What he lost sight of when he did that was the contradiction or the unfairness of deducting the premiums when they are not being continued. In other words, the worker is not accumulating time for Canada pension purposes. Nobody is paying into it for that period of time when he is off on compensation.

The argument falls apart simply because the minister had a fixation on getting to net average income. That was his main purpose in doing this. I understand that, but I think it is fundamentally wrong. I am not making an argument on the other benefits in this case. I am making an argument on CPP. It is not proper that he has done that, because he was solely interested in getting very close to the net take-home pay. That is the problem and he overlooked this problem.

Mr. Sweeney: Let me begin by saying we have made it very clear that we do not believe the CPP deduction should take place and that wherever it appears it will be moved that it be amended. That is on the table. Whether it is accepted is another matter.

May I suggest, however, a compromise along the lines Mr. Laughren has just argued? Quite frankly, I agree with the basic premise of what he says. It seems to me that the CPP deduction will not be a factor for most workers. There are not that many who get a CPP disability pension, or relatively few. Therefore, arriving at net earnings by deducting the CPP premium for those people is probably not unfair.

However, where there is a CPP disability deduction, also deducting the CPP premium is unfair. It would seem to me that it would be relatively easy--and I am saying this even from an administrative point of view--that wherever such a decision is made to deduct the disability pension, it would be reduced by an amount equal to the premium. We are not talking of much money.

In other words, if the CPP deduction from gross earnings is \$200, say, and the premium works out to be \$3 or \$4, then that \$200 would be reduced by \$3 or \$4 to have an offsetting factor. In other words, if the principle is offsetting, and that would be a relatively easy thing to do, you know what the figure is; nobody has to calculate it because it is the same figure for everybody. It is also something you have to have as part of your table for net average earnings that have to be computed every year anyway.

As I say, we are not talking of many people. Of all the people who come to me in a year, I am sure I do not have many more than a dozen who are also getting a disability pension.

Mr. Mancini: You were getting very worried about the time I was taking. Are you still concerned? You rudely interrupted me when I was making a statement, Mr. Chairman, because of the time I was allotted. Now that this debate is continuing, I just wonder what your policy is.

Mr. Gillies: If you dropped by every now and then (inaudible) on a number of occasions, then it would not have to be repeated for your exclusive benefit.

Mr. Mancini: That is why several people have been debating it? For my exclusive benefit? Is that right, Mr. Gillies?

Mr. Chairman: Order, please.

Mr. Mancini: That is why several people have brought the subject up.

Mr. Gillies: I am not going to encourage time-wasting interjections.

Hon. Mr. Ramsay: Mr. Chairman, I have listened intently to the arguments. In the interests of attempting to be as co-operative as possible and on the basis of being accused, perhaps unfairly, of not taking a good enough look at this particular circumstance, I am prepared to review it once again. I think I have made the right decision, but I am prepared to review it again. If anything different comes up in that review, I will move an amendment during the committee of the whole.

3:30 p.m.

Mr. Laughren: If I could speak to the minister's comments, Mr. Chairman, I believe the members of the committee have been very co-operative with respect to taking the minister at his word when he says he will do something. He has looked at things and come back with a very comprehensive statement this morning. That is fine. But I think we are talking about something here that is so simple and so straightforward that it does not require a month or two months of consideration; it is a very straightforward case.

If the minister is serious, he will make his mind up today--that is a more honest approach--so we know exactly what is going on. I do not want to be set up and say, "All right, we will collapse the debate today and come back," and when we come back the minister reaffirms his position. That is not fair.

Hon. Mr. Ramsay: I am afraid that is the way it will have to be. I am not prepared to change my position today. A few moments ago you were suggesting that I had not considered this properly. I am saying to you, fine, I am accepting that suggestion of yours and going back and considering it again. But I am not going to consider it today without the opportunity of sitting down with a few people and discussing it at length. If you wish the section to carry today, I will withdraw that offer.

Mr. Lupusella: What about giving you 20 minutes to discuss the matter with your people?

Hon. Mr. Ramsay: I am not going to compromise on this. My statement is firm.

Mr. Lupusella: We are going to continue with another debate to give you time to consult.

Mr. Chairman: There has been a lot of wide-ranging debate on the Canada pension in general. We are dealing right now with subsection 36(13).

Mr. Mancini: Mr. Chairman, I accept the minister's offer of reviewing our comments. I genuinely believe, whether or not we have differences of opinion, that the positions put forward by Messrs. Sweeney, Lupusella and Laughren are very deeply felt. I share those views. I accept the minister's offer wholeheartedly, if he is going to review this and review our comments.

Mr. Chairman: Shall subsection 13 carry?

Mr. Lupusella: We should vote, Mr. Chairman.

Mr. Chairman: You are asking for a division?

Mr. Lupusella: (Inaudible) dimension now about reviewing the situation of why we should vote.

Mr. Chairman: I understood the minister to suggest that his policy, whether it is a new one or the existing one, will be laid down again at the committee of the whole stage. Am I correct, Minister?

Hon. Mr. Ramsay: That this should pass as is.

Mr. Chairman: That this should pass as is, and certainly the opportunity for debate will be there at committee of the whole, if the minister comes back with the same policy and no change.

Mr. Lupusella: No. Which section are we voting on now, Mr. Chairman?

Mr. Chairman: Subsection 13, at the top of page 10.

Mr. Lupusella: I was on the wrong page.

Mr. Chairman: Those in favour of subsection 13 carrying? Those opposed? Carried.

Mr. Chairman: Subsection 15. Carried?

Mr. Gillies: Is this the one where the concern was that there was no minimum figure?

Mr. Chairman: Yes.

Mr. Lupusella: This concerns the split of the lump sum between two spouses. I believe that was supposed to be reviewed as well, if I am not mistaken, but I do not want to put words in the minister's mouth. I believe the issue was supposed to be discussed in the light of the need criterion, which eventually was one of my recommendations that was supposed to contemplated, based on the criticism raised by Mr. Sweeney.

Mr. Chairman: No. I think the reason for standing it down was the \$60,000 maximum.

Mr. Laughren: No.

Hon. Mr. Ramsay: If you wish, Mr. Chairman, I had a response to that point that I intended to use earlier, but then thought I would try to incorporate everything in my final answer. I am prepared to give that now.

Mr. Lupusella: Go ahead.

Hon. Mr. Ramsay: Mr. Sweeney and Mr. Lupusella have suggested amending this subsection to direct the board on how compensation between eligible spouses is to be allocated. Since it is impossible for the act to anticipate the many different cases in which this subsection might be used, it would be unwise to restrict unduly board discretion in the apportionment of these benefits.

In applying this subsection, it is to be expected the board would be guided by standards used by the courts to determine the financial dependency of a spouse upon the deceased. It should also be said that the maximum figures used in this subsection--that is, \$60,000 for the lump sum and 90 per cent net for continuing payments--are intended to reflect the fact that although several persons may be eligible for compensation as surviving spouses under this subsection, the deceased was providing support to them collectively on the basis of his or her take-home pay.

Mr. Laughren: Mr. Chairman, I wonder whether the committee would consider an amendment to this section.

Mr. Chairman: That is always in order.

Mr. Mancini: You are being very generous now.

Mr. Chairman: In the spirit of co-operation.

Mr. Laughren: I am sure legislative counsel will correct me if I do not use the proper language. This amendment is from the Association of Injured Workers' Groups. It is its suggestion and I think it makes sense.

Mr. Chairman: Mr. Laughren moves that subsection 36(15), as set out in section 9 of the bill, be deleted and replaced with the following:

"Where there is more than one person entitled to receive periodic or lump sum payments under this section as a spouse and the periodic payments to those persons as provided in this section would in total exceed 90 per cent of the net average earnings of the deceased worker at the time of death, and/or the lump sum payment to these persons as provided in this section would in total exceed \$60,000, the total periodic payments will be limited to 90 per cent of the net average earnings and the total lump sum payments will be limited to \$60,000, and the board shall apportion such payments that are so limited between those entitled in accordance with:

"(a) the relative degrees of financial and emotional dependence on the deceased at the time of death,

"(b) the period of separation, if any, from the deceased at the time of death, and

"(c) the size of the relative entitlements to those so entitled without reference to this subsection."

Mr. Laughren: It does not change the intent of the section; it just gives some guidance to the board on what it should be considering when it makes its decision. I will give a copy to the clerk.

Mr. Mancini: Mr. Chairman, I would support Mr. Laughren's position, but I would assume the board would do this anyway. It should not have to be sewn up.

Mr. Lupusella: I am sick and tired of the policies, Remo.

Hon. Mr. Ramsay: I agree with Remo.

Mr. Chairman: I can see we have a problem here.

Interjections.

Mr. Chairman: We have an amendment. Can we deal with the amendment?

Motion agreed to.

Mr. Mancini: Does it carry?

Mr. Laughren: Do not be scared, it has carried. It is part of the democratic process.

3:40 p.m.

Mr. Chairman: We have amendments from Mr. Laughren that we must deal with at this time.

Mr. Laughren moves that section 36 of the act, as set out in section 9 of the bill, be amended by adding thereto the following subsection:

"(16) Where a worker died before the coming into force of this section, and that death resulted from an injury, a spouse alive on the day this section comes into force shall be entitled to compensation payable by way of a lump sum of \$40,000, and subsections 14 and 15 apply with necessary modifications."

Mr. Laughren: Having moved that, I put that before the committee, if you recall, hoping it would stimulate some debate and perhaps a compromise response from the minister. I believe I said at the time that I would be surprised if he bought the entire package. For example, I am not surprised that he did not go for the \$40,000, but surely there was a need to introduce an element of retroactivity to this bill. This is one way of doing it.

If the minister wants to respond with an alternative offer, we would be most pleased to consider it, if we regarded it as a

friendly amendment to the amendment.

Interjection.

Mr. Laughren: No. We would consider a friendly amendment to that amendment, though.

Mr. Lupusella: If I may, I would like to jump into this debate in order to clarify the principle of the issue, because the amendment really reflects the fact of life of deceased workers covered under the present act.

We had an opportunity to see, throughout the course of the public hearings, that injured workers were extremely upset at the way they have been treated, and the way in which the act has been used against them. If there has been a group in the past which has deserved attention from this government, it has been the deceased workers covered under the present act. I am sure no one has the intention of creating two classes of injured workers, the new one of which will be better off in comparison to the surviving spouses covered under the present act.

We also know that, for a long period of time, the pension of a surviving spouse was very small. Before 1979, going back to 1972 and 1973, the monthly payment for a surviving spouse, unless I am wrong, was in the range of \$219 per month. Am I correct, Mr. MacDonald? I do not want to be exact on the figure, but it was just above \$200.

Mr. MacDonald: I think it is academic. They are all being paid the current rate. They have all been adjusted upwards to the current rate.

Mr. Lupusella: No, I understand. I am referring my comments to 1972, when the monthly payment for a surviving spouse was in the range of just above \$200; something like \$219.

On the other principle that should be enunciated by the ramification of such a process, which was inadequate in the past, we are faced with clear-cut cases of individuals who gave their lives in the course of their employment for the betterment and economic development of the employer. In the course of previous debate, I mentioned that the surviving spouse of a policeman who dies in the line of his or her duty is now treated--

Interjection.

Mr. Lupusella: It is not bullshit, Mr. Havrot, if you are making reference to my comment, because we can come out with clear figures on how the surviving spouse of a deceased policeman is treated.

Mr. Chairman: Just stick to your discussion. If you hear comments or think you hear comments, ignore them. I am listening, I want you to wind it up.

Mr. Lupusella: I heard last night that the policemen's association, just because a policeman was killed on the job, is

again calling for capital punishment, and I do not see any distinction--

Mr. Kolyn: Are you for it or against it?

Mr. Lupusella: Never mind about that. We are talking about the principle of benefits, which should be equal. The only difference on that specific amendment is that when we use the public treasury, because it is coming from taxpayers we are planning to be generous with certain groups, but when we touch the pockets of the employers, then we classify injured workers in different classifications.

I do not see any difference. I think the amendment really calls for justice on behalf of the surviving spouse; and this amendment, if it touches the humanity of the Tory members, should be supported and passed instead of being met with nasty interjections.

Mr. Chairman: Those in favour of the amendment please so signify. Those opposed?

Motion negatived.

Mr. Chairman: Mr. Lupusella has two amendments.

Mr. Lupusella moves that section 36 of the act, as set out in section 9 of the bill, be amended by adding thereto the following subsection:

"(17) Where the death results from an injury to a worker and the deceased worker is not survived by a person who is entitled to receive a payment under any other provision of this section but the worker's mother and father or either of them survives a worker, or the only persons entitled to a payment under subsection (6) are the worker's mother and father or either of them, they shall be entitled to receive in aggregate a total lump sum payment of \$40,000."

Mr. Chairman: Those in favour of the amendment? Those opposed?

Motion negatived.

Mr. Chairman: Mr. Lupusella moves that section 36 of the act, as set out in section 9 of the bill, be amended by adding thereto the following subsection:

"(18) Where a worker died before the coming into force of this section and the worker's mother and father or either of them would have been entitled to a payment under subsection (17) had this section been in force at the time of the death, the mother and father or either of them alive on the day this section comes into force shall be entitled to receive in aggregate a total lump sum payment of \$40,000."

Mr. Chairman: Those in favour of that amendment? Opposed?

Motion negatived.

Mr. Chairman: Now back to the bill. The next one on page 10 is section 39 of the act, as set forth in section 11 of the bill. This is an item we stood down.

On section 11:

Mr. Sweeney: We already have a section of the act saying that the employer will pay the first day. This says that the compensation board will pay from the second day onwards. Why was this stood down?

Hon. Mr. Ramsay: I think it was stood down until we finished section 43.

Mr. Sweeney: Let us move ahead to section 43, then.

Mr. Chairman: Yes, sections 39, 40, 41 and 42 were all stood down. There is one stood-down item in section 43; that was subsection 43(3).

Mr. Sweeney: We also have subsections 43(7) and a possible subsection 43(8).

Mr. Laughren: That was the whole 90 per cent question.

Mr. Chairman: Yes, I guess it was all dealing with the 90 per cent question.

Interjection: That has been settled.

3:50 p.m.

Mr. Chairman: I think you understand the minister's position regarding the 90 per cent question. Shall section 39 carry? Carried.

Shall subsection 40(1) carry? Carried.

Shall subsection 40(2) carry?

Mr. Laughren: No. The reason that was stood down was the whole question of building an inflation component into it, I believe.

Mr. Chairman: No. Subsection 40(2) was, I think, the 90 per cent question and the word "suitable" for the two things that were to be further discussed, but I think they were responded to in the minister's statement.

Shall it carry? Those in favour of subsection (40)(2)? Those opposed? Carried.

Subsection (40)(3) deals with Canada pension. Shall that carry?

Mr. Laughren: No.

Mr. Chairman: Those in favour of the section? Those opposed? Carried.

The next item is on page 13--correct me if I am wrong, I am just going by my marked copy, not yours--that is subsection 43(3).

Mr. Laughren: Mr. Chairman, do you want to read it first?

Mr. Chairman: No. I do not think so.

Mr. Laughren: This is the one that really--

Clerk of the Committee: There is an amendment right here from you.

Mr. Chairman: Is there? Okay. An amendment from Mr. Laughren, how about that?

Mr. Laughren moves that subsection 43(3) of the act, as set out in section 11 of the bill, be amended by striking out everything after "basis" in the fifth line and inserting in lieu thereof "of the total average earnings under the concurrent contracts."

Mr. Laughren: If I could speak to my amendment, Mr. Chairman, that is the case where a worker has two jobs and can get injured on a low-paying job or the higher-paying job and the other employment earnings that he would lose are not taken into consideration by this bill.

I think this really is a bad section of the bill. You tell me--and the minister was to deal with this--how it is fair, to use the example I used before, for a worker who may be earning a minimum wage in a part-time job and who has another job that pays him or her a decent salary, who gets injured on the low-paying job and therefore loses all income from both jobs, to get his or her compensation benefits based on the job where the accident occurred, which could be the minimum wage job? That is not fair.

Hon. Mr. Ramsay: We debated that fully at the time.

Mr. Laughren: Yes, we debated it. I think my argument appealed to your Tory work ethic and you were having trouble coming to grips with what you were doing to people who would get hurt under this section. That was my reading of your response. Was I wrong? Were you not somewhat offended by what this does to the work ethic?

Hon. Mr. Ramsay: I am always taken by your arguments.

Mr. Laughren: Yes, I know, but not taken in.

Mr. Chairman: Mr. Ramsay, are you saying you stand by the original clause in the bill?

Mr. Laughren: No kidding. You mean you agree that a worker who gets hurt at the minimum wage should get compensation based on that minimum wage even though it removes the income from

a higher-paying job? That is a remarkable position the minister is taking, it really is. I do not understand it. Maybe I need to prod you a little more.

You do understand the significance of this? We are not talking about a large number of workers. We are talking about a small number of workers, I think. I do not know whether the board has a record of how many people might be affected by this. Mr. Cain shakes his head.

Mr. Cain: I do not know how many. We do not have a record.

Mr. Laughren: However, I think you would agree that it would be a small number.

Mr. Cain: It is not a large number.

Mr. Laughren: It is not a large number.

Mr. Chairman: Shall the amendment carry?

Mr. Laughren: No, no. Something that is as fundamental to the work ethic as this should not be allowed to slip through so easily.

I find it hard to believe that the minister endorses what this section says: that a worker can get hurt at the minimum wage and although it is only a part-time job to supplement his or her income, that is the level at which the compensation should be based. I think the minister understands it, but I find it hard to believe that he endorses it. That really is unfair. If the minister could tell me why he thinks it is fair, I will cease debating and we can get on with it.

I will wait now. If the minister indicates that he is prepared to tell me why he thinks this section is fair, I will stop haranguing him. I await.

Mr. Chairman: I think the minister--

Mr. Laughren: Wait, now, he is--

Mr. Chairman: I am sorry. Okay. I did not want to put words in his mouth.

Hon. Mr. Ramsay: I am always a little reluctant to respond to Floyd on occasions such as this, because then I am sure he feels that he has reeled me in.

Mr. Laughren: No, I never have yet.

Hon. Mr. Ramsay: I cannot say anything more or less than I said the other day when we debated it at considerable length. I certainly do not disagree with the point you are trying to make, but the Workers' Compensation Act is not a social assistance program.

Mr. Laughren: I am not looking for a social assistance program. I am looking for compensation for lost earnings. The worker is going to lose earnings because of an injury on the job. It is not a social program at all. It is simply replacement of lost earnings because of an injury, and that is what we are talking about.

Hon. Mr. Ramsay: Mr. Chairman, that is why I am always reluctant to respond to Mr. Laughren when he gets going like this, because whatever I say is going to have little or no effect and he just starts all over again.

Mr. Chairman: As an impartial chairman, I cannot respond to that.

Mr. Laughren: It is what the minister says that turns my crank.

Hon. Mr. Ramsay: That is right. That is why I should not respond. I do not want to turn your crank.

Mr. Gillies: The minister wants to pull your plug.

Mr. Sweeney: After that, I am fearful of commenting. Mr. Chairman, through you to the minister, a long time back when we debated this, long before we were dealing with the bill itself, one of the counter proposals was that we would be prepared to guarantee the worker the higher of his two wages because that is where he would suffer the most penalty.

Mr. Laughren: There is a compromise.

Mr. Sweeney: We have not specifically put that. As I understand Mr. Laughren's amendment, it was that he would get a combination of the two. As I recall the discussion way back, the point was that the danger to the injured worker is that by taking a part-time job he would be jeopardizing the wages of his full-time job and that we would at least guarantee that the full-time job, which is probably the income that pays his basic living expenses, would not be jeopardized. Would the minister be prepared to accept that as a compromise?

Mr. Lupusella: It is a small compromise.

Hon Mr. Ramsay: No.

Mr. Laughren: Okay. Are we going to vote on my amendment?

Mr. Chairman: Yes. We have an amendment before us. Those in favour of Mr. Laughren's amendment? Those opposed? The amendment is defeated.

Mr. Laughren: I have another amendment, Mr. Chairman.

Mr. Chairman: On the same section?

Mr. Laughren: Yes, on the same section.

Mr. Chairman: Mr. Laughren moves that the section be

amended to read, "based on the average earnings of the two jobs."

Mr. Lupusella: The two wages combined?

Mr. Chairman: Yes, then take the average.

Mr. Laughren: The average of whatever incomes the worker is losing as a result of the accident.

4 p.m.

Mr. Chairman: There is a further amendment. Those in favour of that amendment?

Mr. Lupusella: He wants to continue, Mr. Chairman.

Mr. Chairman: You do not have anything new. It is a--

Mr. Laughren: It is a compromise.

Mr. Chairman: Those opposed to the amendment?

Motion negatived.

Mr. Laughren: I have another amendment. I would move--and this is really the Sweeney amendment, not mine--that the worker's earnings be computed at the higher of the two incomes which the worker was receiving at the time of the accident. The argument that Mr. Sweeney put.

Mr. Chairman: That is understood by everyone, I think. Those in favour of that amendment? Those opposed?

Motion negatived.

Mr. Laughren: Trained seals. You would not even say (inaudible)--

Mr. Chairman: Shall subsection 3, as printed, carry?
Carried.

Subsection 43(3) of the bill agreed to.

Mr. Chairman: Now, glancing your eyes down the page to subsection 43(7)--and, by the way, we have about half an hour if we want to get through this, it is up to the committee members. I just want to remind you, so we can move as quickly as possible.

Under subsection 7, there were a couple of things, as I recall.

Clerk of the Committee: There is an amendment.

Mr. Chairman: Is there an amendment? I am sorry, we have an amendment; two amendments.

Mr. Sweeney: Just hold it for a minute. Mr. Chairman,

may I draw to your attention that the minister's amendment to subsection 7 and my proposal for an additional subsection 8 are very similar? I suspect that they probably have the same result. I wonder if we could read them both. If they do have the same result, then I am quite prepared to accept the minister's.

The minister's amendment is to subsection 43(7).

Mr. Chairman: Mr. Gillies moves that subsection 43(7) of the act, as set out in section 11 of the bill, be amended by striking out "at the date of recurrence of the disability" in the seventh line and inserting in lieu thereof "at the date of the most recent employment of the worker."

Mr. Sweeney: Now, Mr. Chairman, if mine could be heard--as I say, I think it is the same thing, and I just ask for confirmation of that. I am adding a subsection 8.

Mr. Chairman: Mr. Sweeney moves that section 43 of the act, as set out in section 11 of the bill, be amended by adding thereto the following subsection:

"(8) For the purposes of subsection 7, where at the date of a recurrence a worker does not have earnings, the average earnings of the worker at the worker's most recent employment immediately preceding the recurrence shall be deemed to be the worker's average earnings at the date of the recurrence."

Mr. Sweeney: Now, I think that says the same thing. If it does, then I am prepared to drop mine.

Hon. Mr. Ramsay: Yes, it has the same effect.

Mr. Sweeney: The same effect?

Hon. Mr. Ramsay: Yes.

Mr. Sweeney: I will drop mine, then, Mr. Chairman.

Mr. Chairman: Shall Mr. Gillies' amendment then carry?
Carried.

Clerk of the Committee: There is an amendment of Mr. Laughren's.

Mr. Chairman: On the same section?

Clerk of the Committee: Yes, subsection 47(7).

Mr. Chairman: Before that carries, I--

Clerk of the Committee: The minister's amendment carries.

Mr. Chairman: Yes.

Clerk of the Committee: This is another amendment.

Mr. Sweeney: I am not introducing mine if the minister's has carried. That is the point I want to make.

Mr. Chairman: We have a Laughren amendment here. I do not know if it has the same effect or not.

Mr. Laughren moves that subsection 45(7) of the act as set out in section 11 of the bill be amended by striking out "the worker cannot return to work" in the fourth and fifth lines and inserting in lieu thereof "there is no work available to the worker that is suitable for the worker's capabilities."

Mr. Gillies: That is not the right section.

Clerk of the Committee: I am sorry. That is subsection 45(7).

Mr. Chairman: Sorry, it is 45(7), not 43(7). Okay.

Shall the subsection as amended by Mr. Gillies' motion carry? Carried.

Subsection 43(7), as amended, agreed to.

Mr. Chairman: Subsection 44(1) was stood down, and I think it related to the Canada pension plan. Shall subsection 44(1) carry as printed? Carried.

Mr. Sweeney: I understand the minister to have given us a commitment to re-examine the offsetting of premiums and disability. If we pass this one, he is prepared to re-examine it and perhaps bring in an amendment himself at the time of committee of the whole, is that correct?

Hon. Mr. Ramsay: That is correct.

Mr. Chairman: That has carried.

Subsection 45(4) on page 14 of the bill was stood down.

Mr. Lupusella: This is interrelated to subsection 4, I guess?

Hon. Mr. Ramsay: Yes.

Mr. Chairman: Yes. It is related to CPP at 90 per cent. Those in favour of subsection 45(4) as printed? It is carried.

Let us go on to subsection 45(6) at the top of page 15. That relates to the 90 per cent. We have the answer on that. Shall subsection 45(6) carry? Carried.

We have an amendment to subsection 45(7).

In the absence of Mr. Laughren, I move that subsection 45(7) of the act, as set out in section 11 of the bill, be amended by striking out, "The worker can not return to work," in the fourth and fifth lines and inserting in lieu thereof, "There is no work

available to the worker that is suitable for the worker's capability."

Those in favour of the amendment? Those opposed?

Amendment negatived.

Mr. Chairman: Shall the subsection carry as printed?
Agreed.

Subsection 45(8) relates to both the 90 per cent and the Canada pension. Shall subsection 45(8) carry? Carried.

On section 13:

Mr. Chairman: Let us turn now to to section 13 on page 16, which amends section 50 of the act. We have an amendment to subsection 50(1).

Mr. Gillies moved that section 50 of the act as set out in section 13 of the bill be struck out and the following substituted therefor:

"50(1) Where a worker is entitled to compensation and the worker's spouse or the worker's child or children under the age of 19, is or are entitled to support or maintenance under the order of a court that in the opinion of the board is enforceable in Ontario, the board shall divert the compensation in accordance with the court order to the extent that there is default made under the order after this section comes into force."

Mr. Chairman: Is that understood? Those in favour of the amendment? Carried.

On section 15:

Mr. Chairman: On page 17, subsection 56(2) was stood down. It deals with the ex-officiality of the appeals tribunal chairman. This was covered in the minister's statement.

Mr. Laughren: "Ex-officiality"?

Mr. Chairman: Yes, that is a good word. I was part way through it before I saw it and had to keep going.

Mr. Laughren: Now I know why you are the chairman and I am not.

Mr. Chairman: That is right.

Interjection.

Mr. Chairman: Be it ever so humble.

Those in favour of the section as printed?

Mr. Laughren: We believe that the tribunal's members should be independent and be seen to be independent.

Mr. Chairman: Those opposed?

Mr. Mancini: You have not voted with us yet.

Mr. Chairman: I am afraid this is not the time I am going to begin to vote with you. This is one that I feel quite strongly about myself. I vote in favour of the motion as printed.

I am getting a little thick in the head here, I am afraid. Carried.

On subsection 20(1):

Let us go to the bottom of the page to section 20. I guess it was stood down for the same reason. Shall subsection 20(1) carry? Carried.

On subsection 20(2):

Mr. Chairman: Subsection 20(2) was stood down for the same reason. The same vote? Carried.

On section 28:

Mr. Chairman: The next one I think amends subsection 77(5). That is at the bottom of page 20.

4:10 p.m.

Mr. Sweeney: Mr. Chairman, may I draw to your attention that I have an amendment as well. As a matter of fact, the wording is identical. I wonder why.

Mr. Revell: I was consulted by both Mr. Sweeney and the ministry on this particular point. The wording is not, in fact, identical. There is one slight difference and I would draw it to Mr. Sweeney's attention. I believe the ministry's proposal inserts the word "medical" before the word "information" in the third line.

Mr. Chairman: Is there an amendment from the minister too?

Mr. Sweeney: Yes, section 77 as set out in section 28. It is close enough. I am going to drop mine. The wording is so similar, it has the same net effect.

Mr. Chairman: What has that to do with subsection 77(5)?

Clerk of the Committee: Nothing. It adds two new subsections, 77(7) and 77(8).

Mr. Chairman: We have to deal with subsection 77(5) first.

Mr. Revell: I think subsection 77(5) was stood down in order to deal with this issue, because there was some feeling that the confidentiality issue should be dealt with in subsection (5).

To deal with it in subsection (5) would have added insult to injury in terms of it being a fairly lengthy subsection already.

Mr. Chairman: Okay, so shall subsection 77(5) carry?
Carried.

Mr. Gillies moves that section 77 of the act, as set out in section 28 of the bill, be amended by adding thereto the following subsections:

"(7) No employer or employer's representative who obtains access to copies of any of the records of the board shall disclose any medical information obtained therefrom except in a form calculated to prevent the information from being identified with a particular worker or case.

"(8) Every employer and employer's representative who contravenes subsection (7) is guilty of an offence."

Mr. Lupusella: How much?

Mr. Revell: I can answer that, Mr. Lupusella. Under the Provincial Offences Act, there is a general provision that where an act creating an offence is silent, the maximum fine is \$2,000.

Mr. Lupusella: The other question I would like to raise is whether under this provision any lawyer representing the employer receiving medical reports from the board can refer the medical reports to an independent specialist for review and to express opinions about them? Under this section, can he do that?

Mr. Revell: In my opinion, yes, the employer or the employer's representative, be it a lawyer or an officer of the company or whatever, can use the record that is obtained, but that would be a case of disclosure. Therefore, he would have to disclose it in such a way that prevents it from being identified with a particular worker or case. For example, I believe reference was made yesterday to family law cases reported in the law reports. Usually instead of using a name, for example, "Re Herbert Smith," it would be just "Re S, An Infant" or something like that, so you cannot identify a particular person.

Cutting it to its shortest, the employer or the employer's representative, before sending it off for an opinion would have to white out names. If there are references to particular companies and that kind of information that would allow you to tie it down to one particular worker and one particular case, that would have to be removed.

Mr. Lupusella: Which means that actually the report per se delivered by the so-called independent specialist reviewing the file of an injured worker is not valid because there is no specific reference to the individual case, if he cannot use the name of the patient who had to be (inaudible). Am I correct?

Mr. Revell: I am sorry, I do not understand the question.

Mr. Lupusella: I want to make sure my concern is covered under the minister's amendment. What is happening now is that a lawyer representing the employer can refer all the medical reports to an independent specialist without seeing the injured worker and express a medical opinion about the case. By moving this ministerial subsection, can he do that?

Mr. Revell: Yes. He will certainly be able to refer to the file and get an independent opinion without the independent person seeing that particular worker. But, on the other hand, the independent person, assuming that the employer's representative carries out the intent of this section, will not be able to start generating a file on John Smith. He will have a file that says, "Here is a person who has suffered a broken leg and, as a result of suffering the broken leg, the following things have happened."

Mr. Lupusella: So he has to talk in generalities about the case without any specific reference to the individual case.

Mr. Revell: Yes.

Mr. Lupusella: Or else he can be subject to the penalties under the Provincial Offences Act.

Mr. Revell: Yes.

Mr. Lupusella: Okay. So actually my concern is covered, I guess.

Hon. Mr. Ramsay: I would like to think so.

Mr. Chairman: Shall those amendments carry?

Motion agreed to.

Mr. Chairman: The next item is at the top of page 23, subsection 86d(1), and it relates to the appeals tribunal chairman and quorum. Shall subsection 86d(1) carry? Carried. That is subsection 86d(1), which was stood down.

The next one is on page 26, section 86n.

Mr. Sweeney: That is the one in which there could be conflict between the board and the tribunal.

Interjection: That was addressed.

Mr. Chairman: Yes, that was addressed in the minister's statement. Shall section 86n carry? Carried.

Subsection 86p(7), at the bottom of page 27, was stood down, but we have an amendment for subsection 86p(9). Subsection 86p(9) was carried and we have an amendment for it.

Subsection 86p(7), first of all. That was stood down.

Mr. Sweeney: Can you help me with one area? I know we raised a question under clause 86p(7)(b) with respect to

"industrial process." Have we added something in somewhere? Did you not take care of that earlier by adding something in the definitions?

Hon. Mr. Ramsay: "Trade or occupation."

Mr. Sweeney: We added "trade or occupation" in there. That has been done. Okay.

Mr. Chairman: Shall subsection 86p(7) carry? Carried.

Can I have unanimous consent to reopen subsection 86p(9), on the next page?

Mr. Gillies: I am sorry. Have we carried clauses 86p(7)(b), (c) and (d)?

Mr. Chairman: Clauses 86p(7)(b), (c) and (d) were carried, yes.

We are down to subsection 86p(9) on page 28 and, having heard no objection to reopening subsection 86p(9), we can proceed with Mr. Gillies's amendment.

Mr. Gillies moves that subsection 86p(9) of the act, as set out in section 32 of the bill, be amended by inserting after "own" in the first line "priorities."

Mr. Sweeney: I do not remember why we did that. Can somebody tell me?

Hon. Mr. Ramsay: It is about whether I could or should refer something to the panel.

Mr. Sweeney: Ah, yes.

Hon. Mr. Ramsay: I addressed that in my statement.

Mr. Sweeney: I remember.

Motion agreed to.

Mr. Chairman: Shall subsection 86p(9), as amended, carry? Carried.

Section 32 agreed to.

4:20 p.m.

On section 37:

Mr. Chairman: We are on page 30, part III. Sections 132, 133 and 134 all have to be dealt with.

Mr. Sweeney: Mr. Chairman, I have an amendment to section 132. Mr. Revell, I think you have some handwritten copies of that, if you would not mind. Basically my amendment deals with the retroactive factor of surviving spouses.

Mr. Chairman: Mr. Sweeney moves that section 132 of the act, as set out in section 37 of the bill, be amended by adding thereto the following subsection:

"(2) Notwithstanding subsection 1, where the death of the worker occurred before this section comes into force, section 36 of the act, as re-enacted by section 9 of the Workers' Compensation Act, 1984, applies to the spouse and dependent children, if any, alive on the day this section comes into force as if the worker had died on the day the section comes into force, except that the spouse and dependent children may elect, with respect to periodic payments, to continue to receive payments under the act as continued by subsection 1 rather than under the said subsection 36(3). An election under subsection 2 shall be made within 12 months of the coming into force of this section."

Mr. Sweeney: Basically, it means that a surviving spouse has an option prior to this act coming into force. She--assuming we are talking about a she--can continue under the old act, and nothing changes, if that is in her financial best interests, or it can be assumed that the death of the injured worker took place on the day this act comes into force and therefore shall apply to that surviving spouse as it would apply to any other surviving spouse subsequent to this act coming into force.

The setting of the day of effect, the day the act comes into force, is because it is considered the only practical administrative way of doing it. In some cases, the death could have taken place 20 years earlier. Of course, we know that in the act there are offsetting lump sums and pensions. The older a spouse is, the higher one is and the lower the other one is, and that is probably what is going to trigger it in most cases. In some cases, it would be in the best interests of the spouse to stay where she is. That is why we have to provide that election.

Mr. Revell: May I clarify something, Mr. Sweeney? I believe that in every case of a prior death where there is a surviving spouse or a dependent child there will be a lump sum. It is really only the periodic payments that are an election of whether to stay under the old act.

Mr. Sweeney: Yes. It says "with respect to periodic payments."

Hon. Mr. Ramsay: I addressed this matter earlier when it was brought forward by Mr. Laughren with amendments. The cost factor is the--

Mr. Chairman: We have an amendment by Mr. Sweeney.

All those in favour of Mr. Sweeney's amendment will please signify. All those opposed?

Motion negatived.

Shall section 132 carry? Carried.

Section 133 is next. The only reason section 133 was held back was section 132.

Shall section 133 carry? Carried.

The next one is section 134. There is an amendment.

Mr. Gillies moves that part III of the act, as set out in section 37 of the bill, be amended by adding thereto the following section:

"134. Section 40 of this act, as continued by section 132, is repealed and the following substituted therefor:

"40. Where a worker, who has become entitled to benefits under this act and has returned to employment, becomes entitled to payment for temporary disability by reason of any matter arising out of the original accident, the compensation payable for such temporary disability shall be paid on either the average weekly earnings at the date of the accident or the average weekly earnings at the date of the most recent employment of the worker calculated in the manner set out in section 39, whichever is the greater."

Mr. Gillies further moves that sections 134 to 136 of the act, as printed in the bill, be renumbered accordingly at the time of reprinting.

Motion agreed to.

Mr. Chairman: Mr. Laughren moves that section 135 of the act, as set out in section 37 of the bill, be amended by adding thereto as a subsection of section 43 of the act the following:

"(5e) Where a supplement is awarded under subsection 5, the award under subsection 1 and the supplement shall not be less than what the worker would receive if the worker was receiving compensation for total temporary disability."

Mr. Laughren: If I could speak briefly to that, that was the problem we raised this morning and worked out with legal counsel over the noon hour, to resolve that whole problem of the worker going from total temporary disability to a pension plus supplement and losing a substantial amount of money because the worker was not working during that year. Therefore, the earnings basis goes away back--it could be 10 years back--to the time of the accident and removes an inequity which I have always felt the board did not like there, but nevertheless--

Mr. Mancini: Say that again, Floyd.

Mr. Laughren: It is now possible for a worker to be on total temporary benefits as a result of a recurrence of an accident, and he could be on total temporary for a considerable length of time. Then the board says: "All right. We are going to assess this worker for a pension." The worker may already have a small pension. The worker gets his pension, and a supplement to the pension, because of circumstances.

Because the injury occurred 10 years ago, to use an example, the earnings basis on which the supplement is based is tied to

that earnings basis 10 years ago rather than at the time the supplement was awarded to the worker. For that reason, the worker ends up with a very small supplement and permanent disability pension combined. In the example I used this morning, it made a difference of \$600 a month. I do not think there would be a lot of these, but when there is one, it really hurts the injured worker financially.

Mr. Cain, that is the proper explanation, is it not, as you understand it as well?

Mr. Cain: Yes. The explanation you are giving is the one that by using a year's earnings, there are occasions when the earnings basis to pay the supplement is lower than the earnings basis for which one is paying temporary total benefits. The reasons are varying. There are five or six reasons, and I suppose, on balance, one would sometimes say that they are reasonable because of the high earnings immediately before the accident; sometimes it is because of lack of work immediately before the accident.

Mr. Laughren: You would agree, would you not, that the number of people affected by this would not be large?

Interjections.

Mr. Chairman: Procedurally, this is why we stood down subsection 135(5). Can we deal with 135(5) and then with the amendment?

Mr. Laughren: What?

Mr. Chairman: We did not know where to work your amendment in. Okay?

Mr. Laughren: Okay. But I would not vote for section 135 if this were going to be rejected by the committee.

Mr. Chairman: All right. We will deal with--

Clerk of the Committee: Deal with the amendment first. Then we can deal--

Mr. Chairman: We have the amendment adding subsection 5e. Those in favour of Mr. Laughren's amendment? Opposed?

Motion negatived.

Mr. Laughren: I am very unhappy with the decision of the committee on that one. I think that was a mistake the committee made. I know the minister nodded appropriately and you did as you were told, but I think it was a mistake. You will not even give in on something as moderate as that.

Mr. Chairman: Shall subsection 135(5) carry? Carried.

Bill 101, as amended, ordered to be reported.

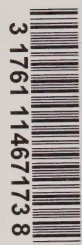
Mr. Chairman: I would like to thank all committee members for their co-operation. We have been dealing with this bill for a long time. It seems like for ever.

I would thank all committee members, the minister and his staff, the board and its staff, particularly Mr. Cain, having worked with us and lent his assistance to us all through the bill, and everyone else, including the Association of Injured Workers Groups who were of great assistance to us, and our clerk, who has stuck with us through thick and thin, Mr. Revell and all other staff. I cannot name them all.

The committee adjourned at 4:31 p.m.



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